

17165
116

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 640.

SAMUEL GOMPERS, JOHN MITCHELL, AND FRANK MOR-
RISON, PLAINTIFFS IN ERROR AND APPELLANTS,

vs.

THE UNITED STATES.

IN ERROR TO AND APPEAL FROM THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA.

FILED JULY 14, 1913.

(23,791)

✓



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 640.

SAMUEL GOMPERS, JOHN MITCHELL, AND FRANK MOR-
RISON, PLAINTIFFS IN ERROR AND APPELLANTS,

vs.

THE UNITED STATES.

IN ERROR TO AND APPEAL FROM THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA.

INDEX.

	Page
Caption	1
Transcript from Supreme Court of the District of Columbia.....	1
Caption	1
Order certifying cause to Justice Wright.....	1
Order appointing committee of inquiry.....	2
Report of committee (Samuel Gompers).....	2
Exhibit "A"—Decree in equity 27305.....	16
Exhibit "B"—Decree of March 23, 1908.....	17
Rule to show cause.....	19
Marshal's return.....	19
Motion to set aside return of service.....	20
Motion to set aside report.....	21
Exhibit "A"—Argument before Justice Gould.....	22
Motion for bill of particulars.....	23
Motion to dismiss.....	26
Letter from United States attorney.....	26
Affidavit of Joseph J. Darlington.....	27
Affidavit of Daniel Davenport.....	29
Affidavit opposing motion for bill of particulars.....	30
Motion to substitute United States district attorney for committee..	33
Pleas of Samuel Gompers.....	33
Order appointing Clarence R. Wilson, United States attorney, to assist in presentation of charges.....	34
Motion to require sworn answer to charges.....	34
Interrogatories to be propounded to Samuel Gompers.....	35
Plea of former jeopardy.....	35

	Original. Print
Order fixing time to answer.....	39
Answer of Samuel Gompers.....	39
Motion to dismiss charges.....	40
Order overruling motion to dismiss charges; exception.....	40
Opinion by Mr. Justice Wright.....	41
Stipulation as to taking testimony.....	62
Order referring cause to examiner.....	63
Exceptions to order of reference.....	63
Notice of time for taking testimony.....	63
Order appointing Albert Harper to take deposition of witnesses in open court; objection and exception noted.....	64
Order granting motion to amend charges.....	64
Motion to amend charges.....	64
Motion for signing certain orders.....	65
Opinion of Justice Wright.....	70
Decree declaring Samuel Gompers guilty of contempt; sentence.....	131
Appeal by Samuel Gompers; objection and exception noted.....	132
Memorandum: Appeal bond for \$100 approved and filed.....	132
Directions to clerk for preparation of transcript of record.....	132
Assignments of error.....	132
Additional directions to clerk for preparation of transcript of record.....	134
Order extending time to file bill of exceptions and transcript of record.....	134
Supplemental assignment of error.....	134
Report of committee (John Mitchell).....	137
Exhibit "A"—Decree in equity 27305 (Gould).....	142
Exhibit "B"—Decree of March 23, 1908 (Clabaugh).....	144
Rule to show cause.....	146
Marshal's return.....	146
Motion to dismiss for want of jurisdiction.....	146
Motion for bill of particulars.....	147
Motion to set aside report.....	148
Exhibit "A"—Argument.....	149
Motion to set aside return of service.....	150
Affidavit of Daniel Davenport opposing motion for bill of particulars.....	151
Affidavit of Daniel Davenport.....	153
Affidavit of Joseph J. Darlington.....	154
Pleas.....	155
Order appointing Clarence R. Wilson, United States attorney, to assist in preparation of charges.....	156
Motion to amend order appointing prosecuting attorneys.....	156
Motion and interrogatories.....	157
Order fixing time to answer charges.....	159
Plea of former jeopardy.....	159
Answer of John Mitchell.....	160
Motion to dismiss charges.....	160
Order overruling motion to dismiss proceeding; objection and ex- ception.....	161
Stipulation to refer cause to examiner.....	162
Order referring cause to examiner.....	162
Notice of taking of testimony.....	163
Order appointing stenographer to report testimony in open court....	163
Objection and exception.....	163

INDEX.

iii

Original. Print

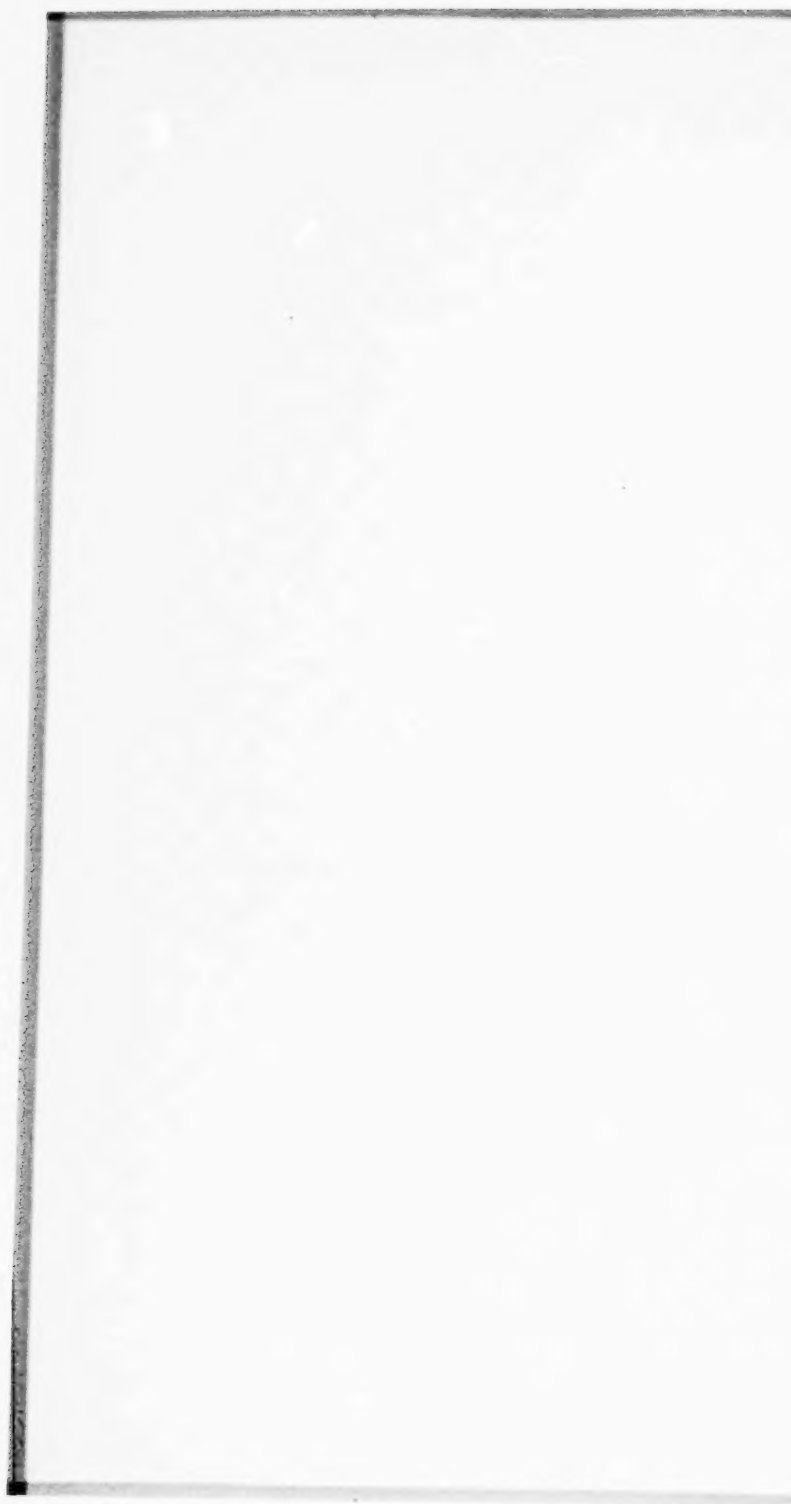
Motion for signing certain orders <i>nunc pro tunc</i>	163
Assignments of error.....	167
Additional designation.....	168
Stipulation as to appearance of John Mitchell for sentence.....	169
Adjudication of contempt.....	169
Decree declaring John Mitchell guilty of contempt; sentence; appeal; objection and exception.....	170
Memorandum: Appeal bond for \$100 approved and filed.....	170
Stipulation as to bill of exceptions; assignment of error and addi- tional assignment of error.....	170
Report of committee (Frank Morrison).....	172
Exhibit "A"—Decree in equity 27305 (Gould).....	179
Exhibit "B"—Decree of March 23, 1908 (Clabaugh).....	181
Rule to show cause.....	182
Marshal's return.....	183
Motion to dismiss for want of jurisdiction.....	183
Motion for bill of particulars.....	183
Motion to set aside report.....	185
Exhibit "A"—Argument.....	186
Motion to set aside return of service.....	187
Affidavit of Daniel Davenport opposing bill of particulars.....	188
Affidavit of Daniel Davenport.....	189
Affidavit of Joseph J. Darlington.....	190
Pleas.....	192
Order appointing C. R. Wilson, United States attorney, to assist in presenting charges.....	193
Motion to amend order appointing prosecuting attorneys.....	193
Motion to require sworn answer to charges.....	194
Interrogatories.....	194
Order fixing time within which to answer charges.....	196
Plea of former jeopardy.....	196
Answer of Frank Morrison.....	197
Motion to dismiss charges.....	197
Order overruling motion to dismiss proceedings; objection and ex- ception.....	198
Stipulation to refer cause to examiner.....	198
Order appointing Albert Harper examiner to take testimony in con- tempt proceedings.....	198
Notice of taking of testimony.....	200
Order appointing stenographer to report testimony in open court; objection and exception.....	200
Motion for signing certain orders <i>nunc pro tunc</i>	201
Decree declaring Frank Morrison guilty of contempt; sentence; ap- peal.....	204
Objection and exception noted.....	205
Memorandum: Appeal bond for \$100 approved and filed.....	205
Stipulation as to bill of exceptions.....	205
Assignments of error.....	206
Additional designation.....	207
Supplemental assignment of error.....	207
Order extending time to file transcript of record.....	208
Order making bill of exceptions part of record.....	208
Bill of exceptions.....	208

	Original. Print
Testimony of Chas. A. Dunnington.....	209
Jas. O'Connell.....	210
Daniel K. Keefe.....	212
Andrew Furuseth.....	212
Dennis F. Manning.....	212
Sam De Nedry.....	218
Annie V. Grace.....	225
Thomas F. Tracey.....	225
C. W. Perley.....	226
Anton Zichtl.....	226
C. B. Matthews.....	227
John H. Lorch.....	232
Albert Harper.....	233
Mark W. Moore.....	233
Frank B. Crown.....	238
Wm. B. Wilson.....	240
Statement of John Mitchell (extract).....	244
Dunnington Exhibit No. 2 (extract).....	245
Article of injunction (publication).....	247
Testimony of Dennis F. Manning (recalled).....	254
Louis A. Sterne.....	255
Miss Rosa L. Guard.....	256
J. E. Giles.....	256
Miss Josephine T. Kelly.....	257
Miss Daisy L. Bradley.....	257
Arthur E. Holder.....	257
John Kirby, Jr.....	258
Order granting injunction (article in "Federationist").....	260
Papers and articles offered in evidence.....	262
Extract from constitution of A. F. of L.....	262
Reports of executive council, etc.....	262
Report of Mr. Gompers, 1907 (extract).....	263
Report of executive council, 1908 (extract).....	263
Extracts from "Federationist".....	264
Urgent appeal.....	266
Editorial.....	267
Official circular.....	276
Petition of Buck's Stove & Range Co.....	280
The law's courtesy and delay.....	297
Testimony of James O'Connell (recalled).....	299
Editorial by Samuel Gompers on free press and free speech.....	300
Extracts from "Federationist".....	307
Review of Justice Wright's decision.....	311
Article, "Mr. Gompers and his two million men".....	317
Testimony of Irwin H. Linton.....	321
Appeal for appropriations.....	321
From proceedings of convention, 1908.....	322
Extracts from "Federationist".....	324
Extracts from "Congressional Record".....	326
Testimony for respondents.....	354
Testimony of Louis S. Stearne.....	354
Miss R. L. Guard.....	357
Miss Josephine T. Kelly.....	358
J. E. Giles.....	360

INDEX.

v
Original. Print

Testimony of E. R. Brownley.....	360
L. A. Sterne.....	361
Extract from "Federationist," "We Don't Patronize" list...	362
Testimony of Samuel Gompers.....	365
Talks on labor (address).....	370
Article, "Summary of injunction, contempt, and appeals"	376
Extracts from "Federationist".....	393
"Talks on labor".....	395
Editorial, "Some reflections for Labor Day".....	412
"Labor's duty in politics".....	417
Report on Justice Wright's decision.....	422
Editorial, "Justice Wright's denial of free speech and free press".....	428
Testimony of John Mitchell.....	491
Replies of Mr. Gompers <i>et al.</i> why sentence should not be passed.....	526
Article, "Columbus convention did not hear both sides".....	528
Article, "Agreement with Buck's Stove & Range Co.".....	537
Report of delegates to convention.....	553
Letter, John Mitchell to Judge Wright.....	572
Testimony of Frank Morrison.....	573
Circular letter.....	573
Labor's protest to Congress.....	575
Address to workers.....	584
Proposed resolutions.....	591
Editorial on injunction abuse.....	594
"Van Cleave's suit against The A. F. of L.".....	615
"Buck's Stove & Range Co. agreement".....	642
Proceedings of 31st annual convention.....	645
"Why sentence should not be passed".....	654
Pamphlet, "Labor aroused".....	676
President Gompers' reply.....	680
Press extracts.....	703
Report of special committee.....	704
Gompers' report on Van Cleave injunction suit.....	706
Extracts from "Federationist" in rebuttal.....	724
Editorial, "Buck's Stove & Range Co. injunction modified"	731
"The boycott—Judicial opinion".....	742
Letter, John Mitchell to Judge Wright.....	745
Clerk's certificate.....	747
Minute entries of argument.....	748
Opinion	749
Judgment	786
Petition for writ of error.....	788
Assignment of errors.....	790
Writ of error.....	791
Petition for appeal.....	792
Bond on writ of error and appeal.....	793
Citation and service on writ of error.....	794
Citation and service on appeal.....	795
Stipulation as to record.....	796
Clerk's certificate.....	796



In the Court of Appeals of the District of Columbia.

No. 2477.

SAMUEL GOMPERS et al., Appellants,
vs.
UNITED STATES.

u Supreme Court of the District of Columbia.

No 30180. Equity.

In the Matter of SAMUEL GOMPERS, JOHN MITCHELL, and FRANK MORRISON.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Order Certifying Cause to Justice Wright.*

Filed May 16, 1911.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

No. 27305.

BUCK STOVE & RANGE Co., Plaintiff,
vs.
AMERICAN FEDERATION OF LABOR et al.

Inasmuch as the injunction in the above entitled cause was originally issued by the justice now presiding in Equity Court No. 2, all matters pertaining to an alleged violation by certain defendants herein of the injunction order heretofore issued are hereby certified to Mr. Justice Wright for whatever action, if any, is appropriate to be taken.

ASHLEY M. GOULD, *Justice.*

Order Appointing Committee of Inquiry.

Filed May 16, 1911.

In the Supreme Court of the District of Columbia.

No. 30180. Eq.

In the Matter of SAMUEL GOMPERS, JOHN MITCHELL, and FRANK MORRISON.

It appearing to the Court that there is reason to believe
2 that Samuel Gompers, John Mitchell and Frank Morrison
are guilty of contempt of the Supreme Court of the District
of Columbia in wilfully violating the terms of an order of injunction
issued by the court on or about the 18th day of December, A. D.
1907, in the cause numbered Equity 27,305 and entitled The Buck's
Stove and Range Co., plaintiff, versus The American Federation of
Labor, Samuel Gompers et als, defendants, it is ordered: that J. J.
Darlington, Daniel Davenport and James M. Beck Esqs, be and
they are hereby appointed, authorized and empowered to inquire
whether there is reasonable cause to believe the said persons guilty as
aforesaid. And if yea, they are hereby empowered and directed
forthwith to prepare, file, present and prosecute against the persons
hereinbefore first named, charges of contempt of Court: to the end
that the authority of the Court be established, vindicated and sus-
tained.

WRIGHT, Justice.

Report of Committee.

Filed Jun- 26, 1911.

In the Supreme Court of the District of Columbia.

No. 30180. Equity.

In re SAMUEL GOMPERS.

The undersigned, directed by the Court's order of May 16, 1911,
to inquire whether the above named Samuel Gompers has
3 been guilty of contempt in wilfully violating the terms of an
injunction issued by the Court in the case of the Buck's
Stove & Range Company vs. The American Federation of Labor,
Samuel Gompers and others, defendants, No. 27,305, Equity, and
if yea, to file and present charges of such contempt of court to the
end that its authority be established, vindicated and sustained, re-
port that there is reasonable cause to believe that the said Samuel
Gompers is guilty as aforesaid, and they accordingly present the fol-
lowing:

Heretofore, to wit, on the 18th day of December, 1907, this court, in said Equity Cause No. 27,305, granted an injunction pendente lite against the said American Federation of Labor, Samuel Gompers and others, a copy whereof is hereto annexed, marked Exhibit "A," and made a part hereof, wherein and whereby the said Samuel Gompers, together with the other defendants in the said equity cause therein named, were restrained and enjoined from conspiring or combining in any manner to restrain, obstruct, or destroy the business of the Buck's Stove & Range Company, complainant in said equity cause, or to prevent it from carrying on its business without interference from them or any of them, from interfering in any manner with the sale of the product of its factory or business, from declaring or threatening any boycott against it, its business, or its product, from printing, issuing, publishing or distributing through the mails or in any other manner any copy or copies of the American Federationist, or any other written or printed newspapers, magazine, circular, letter or other document or instrument whatsoever which should contain or in any manner refer to

4 the name of the complainant, its business or its product in the "We Don't Patronize," or the "Unfair" list of the said defendants, or any of them, or containing any reference to the complainant, its business or its product, in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating whether in writing or orally, any statement or notice, of any kind or character whatsoever, calling attention to the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same were, or had been declared to be "Unfair," and from making any representation or statement of like effect or import, for the purpose of or tending to any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm or corporation, or the public, not to purchase, use, buy, trade or deal in stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in the complainant's product, either directly or through orders, directions or suggestions to committees, associations, officers, agents or others for the performance of any such acts or threats, and from in any manner whatsoever impeding, obstructing, interfering with or restraining complainant's business, trade or commerce, in the State of Missouri, or in other States and Territories of the United States or elsewhere wheresoever, and from soliciting, directing, aiding,

5 assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid; which injunction thereafter, namely, on the 23d day of December, 1907, became technically operative by the filing by the complainant in said equity cause of an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitably suing out the injunction, as provided

in and by the said order of injunction, and in conformity with the rules of this court.

The said decree of injunction pendente lite was followed by a final decree against the said American Federation of Labor, Samuel Gompers and others, passed on the 23d day of March, 1908, perpetually restraining and enjoining the said defendants from doing any of the said acts or things so prohibited by the said decree of December 18, 1907, a copy of which final decree is herewith filed, marked Exhibit "B" and made a part hereof.

There is reasonable cause to believe, and it is hereby charged that the said Samuel Gompers was guilty of contempt in wilfully violating the terms of the said injunction in the following particulars:

1. After passage by the court of its said decree of injunction of December 18, 1907, and the knowledge of it upon the part of the said Samuel Gompers, he caused a large number, to wit, more than 10,000 copies of the January, 1908 number of the American Federationist, which was the official journal of the American Federation of Labor, and of which he was the editor, to be issued and published in advance of its usual date of issue, for the express and admitted purpose on his part to anticipate the filing of the required injunction undertaking, in which January, 1908, issue of the said Federationist the name of the Buck's Stove & Range Company was published, as he well knew, in the "We Don't Patronize" or "Unfair" list of the American Federation of Labor. A large number, to wit, many thousands of copies of the said January American Federationist, were wilfully caused and procured by the said Samuel Gompers to be deposited in the United States mails, on the day immediately preceding the filing of the said undertaking, while many other thousands of copies of this said publication were by him wilfully caused and procured to be delivered to the American News Company as his agent, or as the agent of his co-defendant the American Federation of Labor, of which he was President, for the purpose on his part of being distributed to the public, which distribution by his said agency and agencies he wilfully took no steps to stop or have discontinued after knowledge by him of the giving of the said injunction bond, and that the injunction granted by the court had thereby become technically operative and effective. The said Samuel Gompers wilfully hurried, and in the said equity cause expressly admitted that he hurried, the issue of the January, 1908, number of the Federationist, for the express purpose of getting it out before the undertaking was filed; he hurried up the issue because of the possibility that the complainant would give the undertaking that his purpose was to affect the complainant's business by influencing his fellow-workmen and
- 7 the labor unions to prevail upon the complainant to come to an agreement, that he hoped to lessen its business until it did come to such an agreement, which was the purpose of the boycott, (that he anticipated that the injunction would soon become operative, and was diligent to see that the issue was distributed before it was done, and that for this purpose he placed a large number of copies in the hands of the Washington News Company for distribu-

tion, neither informing that Company that the injunction order had been signed and might become operative, nor taking any steps to prevent it from circulating the copies after he learned that the injunction undertaking had been given; that he had hurried the issue because he wished to get the issue out before the injunction became operative in order that the complainant's name might continue to be published in connection with the "We Don't Patronize" caption without the interference of anyone, including the court, and that he did so hoping, and with the purpose, that the effect might lessen the business of the complainant until it came to such an agreement, which was the original purpose of the boycott.

II. After the filing of the said injunction undertaking, and knowledge thereof upon the part of the said Samuel Gompers, he wilfully caused and permitted the further circulation, both through the United States mails and otherwise, of the said January, 1908, number of the American Federationist, containing the name of the Buck's Stove & Range Company in the "We Don't Patronize" or "Unfair" list of the American Federation of Labor, as he at the time well knew, and for the circulation of which journal he admitted in the said equity cause that he was responsible.

III. On and after the 23d day of December, 1907, the said Samuel Gompers, who was both the president and the general representative of the American Federation of Labor, wilfully caused and permitted to be publicly circulated a large number, to wit, several thousands of copies of the printed proceedings of the Convention of the said American Federation of Labor held at Norfolk, Va., in the month of November, 1907, which printed proceedings, so by him caused and permitted to be published and circulated, not only contained and referred to the name of the Buck's Stove & Range Company, its business and product in connection with the "We Don't Patronize" or "Unfair" list of the said American Federation of Labor, as he at the time knew, but, in addition thereto, contained the following, as he then knew:

(a) A report by the said Samuel Gompers to the said Convention of the American Federation of Labor, containing, inter alia the following:

"Recently one of the branches of the Federal Courts decided by a majority vote that the boycott is illegal. * * * We should demand the change of any law which curbs the privilege and the right of the workers to exercise their normal and natural preferences. In the meantime, we should proceed as we have of old, and, wherever a court shall issue an injunction restraining any of our fellow-workers from placing a concern hostile to labor's interests and themselves on our Unfair list, and enjoining the workers from issuing notices of this character, the further suggestion is made that, upon any letter or circular issued upon a matter of this character, after stating the name of the unfair firm and the grievance complained of the words 'We have been enjoined by the Courts from boycotting this concern' could be added with advantage."

(b) An editorial written and published by the said Samuel Gom-

pers, and of which he wilfully had more than 30,000 copies distributed all through the country, which said editorial was originally published in the February, 1908, issue of the American Federationist, containing, inter alia, the following:

"Justice Gould, of the Supreme Court of the District of Columbia, issued an injunction, on December 18, 1907, against the American Federation of Labor and its officers, and all persons within the jurisdiction of the court.

"This injunction enjoined them as officers, or as individuals, from any reference whatsoever to the Buck's Stove & Range Company's relations to organized labor, to the fact that the said Company is regarded as unfair; that it is on an 'unfair' list, or on the 'We Don't Patronize' list of the American Federation of Labor. The injunction orders that the facts in controversy between the Buck's Stove and Range Co., and organized labor must not be referred to, either by printed or written word or orally. The American Federation of Labor and its officers are each and severally named in the injunction. This injunction is the most sweeping ever issued.

It is an Invasion of the Liberty of the Press and the Right of Free Speech.

10 "On account of its invasion of these two fundamental liberties, this injunction should be seriously considered by every citizen of our country."

* * * * *

"With all due respect to the court it is impossible for us to see how we can comply with all the terms of this injunction. We would not be performing our duty to labor and to the public without discussion of this injunction. A great principle is at stake. Our forefathers sacrificed even life in order that these fundamental constitutional rights of free press and free speech might be forever guaranteed to our people. We would be recreant to our duty did we not do all in our power to point out to the people the serious invasion of their liberties which has taken place. That this had been done by judge-made injunction and not by statute law makes the menace all the greater.

* * * * *

"The publication of the Buck's Stove and Range Co., on the 'We Don't Patronize' list of the American Federation of Labor is the exercise of a plain right. To enjoin its publication is to invade and deny the freedom of the press—a right which is guaranteed under our constitution.

* * * * *

"The matter of attempting to suppress the boycott of the Buck's Stove and Range Co., by injunction, while important, yet pales into insignificance before this invasion and denial of constitutional rights.

* * * * *

11 "The members of organized labor are not themselves obliged to refrain from dealing with the firms on the 'We Don't Patronize' list of the American Federation of Labor. The information is given them. There is no compulsion. They are entirely free to use their own judgment.

* * * * *

"No person can be compelled to buy an article. If the purchaser chooses to let alone certain products for any reason or for no reason there is no way of compelling him to buy.

"This injunction can not compel union men or their friends to buy the Buck's Stoves and Ranges. For this reason the injunction will fail to bolster up the business of this firm which it claims is so swiftly declining.

"Individuals as members of organized labor will still exercise the right to buy or not to buy the Buck's Stoves and Ranges. It is an exemplification of the saying that: 'You can lead a horse to water but you can't make him drink,' and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not purchase the Buck's Stoves and Ranges.

It may not be amiss here to say that in all these proceedings, whether before the court or in the contest forced upon labor by the Buck's Stove and Range Co., no element of personal malice or ill-will enters. Labor is earnestly desirous of entering into friendly relations with employers, and this is none the less true of its desire to reach an honorable adjustment and agreement with the

12 Buck's Stove and Range Co. So long, however, as that company continues in its hostile attitude to labor, denying it the right to organize, discriminates against Union members, and refuses to accord conditions of employment generally regarded as fair in the trade, it must expect retaliatory measures; these measures always, however, within the law and for the purpose of ultimately reaching an honorable, mutually advantageous agreement.

"The publication of the Buck's Stove and Range Co. on the 'We Don't Patronize' list of the American Federation of Labor is only an incident in the history of the case. These stoves might have been let as severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing that firm from the list against which we primarily protest, it is this injunction invading the freedom of the press.

"Justice Gould, in one portion of his opinion, says: 'Defendants (the American Federation of Labor) have the right either individually or collectively to sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves.' (Heavy type and brackets are ours.)

"Here he states precisely the whole case of the American Federation of Labor. This is what we have done. This is the sum total of labor's offending. The publication of the Buck's Stove and Range Co. and other firms on the 'We Don't Patronize' list is merely giving truthful information at the request of our members as to

13 whether or not certain firms employ union men and concede the other conditions of employment usually granted by those concerns which recognize union labor.

"It would seem that having made the above-quoted statement, Justice Gould would have found in it the reason for a refusal to issue the injunction. He, however, goes on to assume that there has been some unwarrantable interference with the plaintiff's business, though neither in his opinion nor in the injunction itself does he make it clear how he arrived at the conclusion that the union course was any other than as indicated in his own language."

IV Following the injunction order of December 18, 1907, an opinion by one of the counsel for the complainant in the said equity cause had been published to the effect that, although the order of the Supreme Court of the District of Columbia to punish for contempt of court was limited to such persons as it might at any time find within the territorial limits of the District of Columbia, the decree was binding upon all persons comprised within its terms, wherever they might reside, and that it was a criminal offense under the Statutes of the United States, punishable by imprisonment in the penitentiary, for any two or more persons anywhere in the United States to conspire together to evade or defeat the decree by doing any of the acts prohibited by it, and that such persons were liable to prosecution therefor by the Federal authorities. Thereupon the said Samuel Gompers published in the February, 1908, number of the American Federationist a copy of the decree of injunction, prefacing it, in large type, with an editorial written by him as follows:

14

"Order Granting Injunction.

"In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove and Range Company declares that punishment for violation of the injunction issued by Justice Gould, against the American Federation of Labor, applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation of Labor assure us that this construction of the court's order is accurate."

The object of the foregoing editorial was, and the said Samuel Gompers expressly admitted it was, to inform the local unions so that they might know "what they might do and what they might not do;" that the information he wished to convey was that those who violated the injunction could be punished only in case they thereafter came in the said District, and that he thought the opinion of the complainant's counsel would be valuable to the working people, so that they might be guided by it.

The publication of the said editorial was immediately followed by articles and editorials in the various journals, magazines or organs published by or in the interest of the numerous affiliated bodies composing the American Federation of Labor, of which the following are examples:

15 "All the Justice Goulds, Buck's Stove and Range Company injunctions, and United States Supreme Court Judges, with their declarations of the Erdmann law as unconstitutional will some day be in Heaven or Hell, and trade unionism will still flourish so don't worry."

"Neither Van nor his ally Judge Gould
and the combined forces of Hell,
Can bridle free speech in this country,
And the same old story will tell."

V. On or about the 24th day of January, 1908, the said Samuel Gompers wilfully united with Frank Morrison, John Mitchell and others in printing and widely circulating a large number, to wit, many thousands of copies of a paper designated by them "An Urgent Appeal for Financial Aid in Defense of Free Press and Free Speech," and, also, caused the same to be printed in the February, 1908, American Federationist, which "Urgent Appeal," among other things, contained the following language, as he then knew:

"To All Organized Labor, Greeting:

"Justice Gould, of the Supreme Court of the District of Columbia, has issued an injunction against the American Federation of Labor and its officers, officially and individually.

"The injunction invades the liberty of the press, the liberty of speech.

"It enjoins the American Federation of Labor, or its officers, from printing, writing, or orally communicating the fact that the Buck's Stove and Range Company has assumed an attitude of hostility toward labor, and that organized labor has made this fact

16 known, and asks our friends to use their influence and purchasing power with a view of bringing about an adjustment of all matters in controversy between that company and organized labor. The injunction is of the most sweeping character, and it, as well as the suit in connection therewith, must of necessity be contested in the courts, though it reach the highest judicial tribunal of our country.

"With this is a re-print of an editorial from the February, 1908, American Federationist, entitled 'Free Speech, Free Press, Invaded by Injunction against A. F. of L.—A Review and Protest.' The editorial contains a full presentation of labor's position in regard to this injunction."

The said Samuel Gompers wilfully caused and assisted in causing to be re-printed, and to be circulated with the said "Urgent Appeal," and as a part thereof, thousands of copies of the said editorial contained in the February, 1908, American Federationist, referred to in Paragraph III of this Report, and, further, wilfully caused and assisted in causing thousands of copies of the editorial prefixed to the copy of the injunction printed in the said February, 1908, number of the American Federationist, which editorial is set out in Paragraph IV of this Report, to be re-printed for the purpose of circulation, and to be widely circulated throughout the various States and Territories of the United States in conjunction with the said "Urgent Appeal," for the purpose of suggesting to the two million

members of the American Federation of Labor, and all persons in sympathy with them, that they might violate the said injunction of the court and might defeat its object and purpose without danger of punishment, provided they were not, or should not come, within the territorial limits of the District of Columbia.

VI. In the March, 1908, number of the American Federationist, the said Samuel Gompers published in the editorial columns the following:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

VII. In the April, 1908, copy of the American Federationist, issued after the final decree of this court in the said equity cause in effecting making perpetual the injunction pendente lite granted by the court on December 1, 1907, the said Samuel Gompers wilfully published editorially the following:

"The temporary injunction issued by Justice Gould, of the court of equity, of the District of Columbia, in the (Van Cleave) Buck's Stove & Range Company of St. Louis against the American Federation of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia.

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe Hat."

And, in another column of the April, 1908, copy of the Federationist, the said Samuel Gompers published the following:

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove & Range Company of St. Louis. Fellow-workers, be true and helpful to yourselves and to each other. Remember that united effort in the cause of right and justice must triumph."

VIII. In a public address to a large audience of working people in the City of New York on April 19, 1908, the said Samuel Gompers said:

"They tell us that we must not boycott. Well, if the boycott is illegal, we won't boycott. But I have no knowledge that any law has been passed or any order issued by any court compelling us to buy, for instance, a range or a stove from the Buck's Stove and Range Company. You know that myself and several are enjoined from telling you, and we are not prepared to tell you, that the Buck's Stove and Range Company is unfair. There are a number of men who have been having suit brought against them for two hundred and forty thousand dollars. That is not very much, between you and me; but a few hatters in Danbury, Connecticut, are being sued for saying that Loewe and Company, hat manufacturers of Danbury, Connecticut, are unfair. I am not prepared to say that that is in violation—that they are unfair.

"Of course, in the case of the Buck's Stove and Range Company, if I told you that the Buck's Stove and Range Company was still unfair, when I got back to Washington tomorrow or some place where they say people play checkers with their noses—well, as I say, I am not prepared to tell you that these things are unfair. But there is no law, no court decision that compels you to buy them, nor does any law compel you to buy anything without the union label."

IX. In a public address delivered by the said Samuel Gompers before a large gathering of working people on or about the first day of May, 1908, in the City of Chicago, Ill., he said:

"I might say just parenthetically about the hatters' case that you are not now permitted to boycott the Loewe hats, but I want to call your attention to the fact that there is no law compelling you to wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. That applies equally to Mr. Van Cleave's stoves and ranges. And, by the way, I don't know why you should buy any of that sort of stuff, I don't; but that is a matter to which we can refer more particularly in our organizations."

X. In the July, 1908, issue of the American Federationist, the said Samuel Gompers wilfully wrote and published editorially the following:

"The Supreme Court of the District of Columbia has made permanent the injunction issued by Justice Gould enjoining the American Federation of Labor, its officers, its affiliated unions and their members and friends from declaring that the Van Cleave Buck Stove and Range Company of St. Louis is on the unfair list of the American Federation of Labor or the publication of that statement in the American Federationist. An appeal will be taken to the Court of Appeals of the District of Columbia, and, if necessary to the United States Supreme Court. The injunction does not compel anyone to buy the Van Cleave Buck Stoves and Ranges, nor has any decree been issued compelling anyone to buy Loewe's hats."

XI. In the September, 1908, issue of the American Federationist, the said Samuel Gompers wilfully published editorially the following:

"We have also witnessed in the past year most serious judicial invasion and usurpation of individual liberty and human freedom by the abuse of the writ of injunction."

"An attempt has been made by the abuse of the writ of injunction to deny and prohibit the freedom of speech and the freedom of the press; and men have been cited to show cause why they should not be punished purely for the right of free press and free speech—rights not only natural and inherent in themselves, but guaranteed by the Constitution of our country, and which our forefathers fought to save, and which a free people never dreamed would ever be placed in jeopardy."

XII. In his report to the Executive Council of the American

21 Federation of Labor, bearing date the 9th day of September, 1908, and which he thereafter caused to be published at page 1001 of the American Federationist for the month of November, 1908, and widely disseminated, the said Samuel Gompers wilfully used the following language:

"Buck's Stove and Range Company Injunction Suit.

"As you have been previously advised, Vice-President Mitchell, Secretary Morrison and myself have been cited to appear before the Supreme Court of the District of Columbia to show cause why we should not be punished for contempt for violation of the court's injunction. The petition upon which the Buck's Stove and Range Company asked for our punishment was published in the September issue of the American Federationist, and I suggest that it be read in connection herewith, as it will show to what extent the Executive Council and officers and members of affiliated organizations and all others are enjoined, and what they are enjoined from doing.

"Your attention is especially called to a feature of the case of this injunction. If all the provisions of the injunction are to be fully carried out, we shall not only be prohibited from giving or selling a copy of the proceedings of the Norfolk Convention of the A. F. of L., either a bound or unbound copy; or any copy of the American Federationist for the greater part of 1907, and part of 1908, either bound or unbound, but we, as an Executive Council, will not be permitted to make a report upon this subject to the Denver Convention. Unless we violate the terms of the injunction, we are prohibited from referring to the case at all, either in our report to the Convention or to others, and should a delegate to the Convention ask the Executive Council what disposition has been made or what the status of the case is, we shall be compelled to remain silent. For one I am unwilling to be placed in such a position. I have neither the inclination nor the intention of violating the process of the court, but I cannot see how it is possible for us to hold up our heads as honest men, and still refuse to give an accounting to our fellow workers, and to the public as to the status and outcome of this case."

XIII. In a public address made by him in the City of Indianapolis, State of Indiana, on the 29th day of September, 1908, the said Samuel Gompers said:

"I want to say this to you and to all that it may concern, that so long as I retain my health and my sanity, I am going to speak upon any subject on God's green earth, and as a citizen of this country and as editor of the American Federationist, the official monthly magazine of the American Federation of Labor, so long as I am endorsed by labor of the United States with the performance of duties of that office, I will discuss every subject which forms itself to my judgment as being just and right. * * * The injunction which Judge Taft issued while upon the bench is now the basis for the injunction against the American Federation of Labor and its officers and the great rank and file of the Labor organiza-

tions of the country, just as in issuing the injunction of the Buck Stove & Range Co. quoted in Judge Taft's injunction in support of his, Judge Gould's position. Do you know that about two weeks ago John Mitchell, Frank Morrison and I were three of us
 23 haled to court to show cause why we should not be punished, why we should not be sent to jail for contempt of court. * * * I want to say to you that if the injunction is strictly construed and enforced, I am in contempt of court again for telling you that, but I propose to discuss this thing, and I do not want to be in contempt of court, but I propose to discuss it. The injunction prohibits me from mentioning the above stove and range company in this case to anybody, either by word of mouth or by letter, or either in letter or circular or any way, but I can't help that. I must discuss it. I will explode if I don't, and I don't want to go to jail but I prefer that to exploding. I don't know what his Honor, the Judge, may do with Frank Morrison and John Mitchell and I * * * The Judge need not give any explanation as to why he finds that a man has not shown good cause, why he should not be punished for contempt of court. He issues the prescribed injunction to its extent; he hails to the court the man who he charges as having violated it, and then he sets the punishment as his judgment, his opinion. If he has had a good night he may be lenient with the culprit; if he has had a bad night, Lord pity the poor fellow; and I suppose good and bad nights are frequently controlled by good or bad evenings before the night."

XIV. In a public address delivered by him in the City of Baltimore, State of Maryland, on or about the 26th day of October, 1908, the said Samuel Gompers said:

"The injunction issued against me by Judge Gould was based on Judge Taft's decisions. By that injunction I am restrained
 24 from talking to you about this case. No labor leader can mention it in speech or circular. I am enjoined from telling you I won't buy a Buck's stove or range. But I won't buy one just the same. I am enjoined from telling you there is no law compelling you to buy one; but there isn't such a law.

"Because of this case I am on trial, and may have to go to jail. There is no fun in going to jail, and I don't want to go; for no man would feel more keenly the sting of having his liberty restrained. But the whole world would be a narrow cage were I denied the freedom of speech. I say these things with a full consciousness of what the responsibility may be. But jail or no jail, I'm going to discuss the principles of liberty."

XV. That, at the public reception tendered him by the labor organizations of the City of Washington in the month of November, 1908, the said Samuel Gompers made an address, which he caused to be published in the January, 1909, American Federationist, in the course of which he uttered the following language:

"Now you know the Supreme Court of the District of Columbia has issued an injunction against the American Federation of Labor, its executive officers, our affiliated organizations, and their members and friends and sympathizers and agents, attorneys and counsel

and conspirators and co-conspirators and what not, and among these you are included. The court issued the injunction prohibiting us from publishing, from printing, from writing, from speaking, from

whispering that the Van Cleave Buck's Stove and Range Company is unfair to organized labor, and for anyone to publish, to print, to write a letter or to speak of this is violation of the terms of the injunction. Yet the Constitution of the United States provides that the right of freedom of speech and freedom of the press and public assemblage shall never be denied or abridged. In other words, an injunction of such a character is an invasion of the Constitutionally guaranteed rights of every man and woman in this country.

"I have said and I now want to repeat here, not in bravado, but in full consciousness of the responsibility with which the statement may be interpreted, that when it comes to a choice between obeying an injunction denying me the right of free speech, free expression of the thoughts that come to my mind and which are not in violation of the laws of my country, I shall have no hesitancy in standing upon my Constitutional rights. We have a dispute with the Van Cleave Buck's Stove & Range Company; I have been enjoined from saying that I won't buy a Buck's stove or range, and I won't, and because I have said this in several ways, by discussion of the case editorially and in the American Federationist, and Frank Morrison has sent out the American Federationist containing these things I have said, and because John Mitchell was presiding over the convention of the United Mine Workers, when a motion was placed before that body, advising the members of the Mine Workers not to buy a Buck's stove or range, we have been charged with contempt—that is, we have been called upon to show cause why we should not be sent to jail, and I could not show cause.

26 "The things I have been charged with, I did. I have not denied them. I have discussed them upon the platform, as I discuss them here. I have written circulars about them. Secretary Morrison sent them out, and I ask you now to place yourself in my position, what would you do."

XVI. In a report made by the said Samuel Gompers to the Convention of the American Federation of Labor held in November, 1909, the following language was used by him, referring to the injunction granted by this court on December 18, 1907:

"When a judge so far transcends his authority, and assumes functions entirely beyond his power and jurisdiction, when a judge will set himself up as the highest authority in the land, invading constitutionally guaranteed rights of citizens, when a judge will go so far in opinion, decision and action, that even judges of the Court of Appeals have felt called upon to criticize his action — 'unwarranted' and 'foolish,' under such circumstances it is the duty of the citizen to refuse obedience and to take whatever consequences may ensue."

Each and every of the foregoing publications, statements and acts of the said Samuel Gompers was in wilful violation of the injunction decree of this court in the said equity cause of the Buck's

Stove & Range Company vs. The American Federation of Labor, Samuel Gompers and others, No. 27,305, was done for the purpose of inducing others to disregard and violate the injunction of this court, and thereby to defeat it, and, in each of the said publications, statements and acts, the said Samuel Gompers is guilty of contempt of the court, and has subjected himself to due punishment therefor.

With regard to each and every of the acts, statements and publications above set forth, the said Samuel Gompers asserted, and it may be he then believed, that the injunction was not binding upon him because of what he claimed to be his constitutional right of free speech and a free press; and it may be that, now that this contention upon his part has been determined by the Supreme Court of the United States to be unfounded, he may be prepared to make such due acknowledgment, apology and assurance of future submission to the court as may sufficiently answer the necessary purpose of vindicating its authority, and that of the law. Should such acknowledgment, apology and submission not be forthcoming, after due notice and opportunity, the course necessary to be pursued to maintain its dignity and due respect for and obedience to the law, is respectfully submitted to the court for its consideration.

JOSEPH J. DARLINGTON,
JAMES DAVENPORT,
JAMES M. BECK, *Committee*.

28 DISTRICT OF COLUMBIA, ss:

I, Daniel Davenport, on oath say that I have read the foregoing Report, signed by Joseph J. Darlington, James M. Beck, and myself, Committee, and know the contents thereof; that this affidavit is made by me on behalf of the said Joseph J. Darlington and James M. Beck, as well as on my own behalf, because of the fact that the said matters and things in the said Report set forth are more largely within my personal knowledge; that the matters and things set forth in the said Report as of personal knowledge are true, and that those set forth upon information and belief I believe to be true.

DAN'L DAVENPORT.

Subscribed and sworn to before me this 24th day of June, A. D. 1911.

[SEAL.]

IRWIN H. LINTON,
Notary Public, D. C.

In the Supreme Court of the District of Columbia.

Equity. No. 27305.

THE BUCK'S STOVE AND RANGE COMPANY
vs.
THE AMERICAN FEDERATION OF LABOR et al.

This cause coming on to be heard upon the petition of the complainant for an injunction pendente lite as prayed in the bill, and the defendants' return to the rule to show cause issued upon the said petition having been argued by the solicitors for the respective parties, and duly considered, it is thereupon by the court, this 18th day of December, A. D. 1907, Ordered that the defendants The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from

30 them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails or in any other manner, any copies or copy of the American Federationist, or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize" or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention of complainant's customers, or of

dealers, or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of co-ercing or inducing any dealer, person, firm or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling, or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other states and territories of the United States, or elsewhere where-soever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid.

And it is further Ordered by the court that this order shall be in full force, obligatory and binding upon the said defendants, on each of them, and their said officers, members, agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them upon the service of a copy hereof upon them or their solicitors or solicitor of record in this cause: Provided the complainant shall first execute and file in this cause, with surety or sureties to be approved by the court or one of the justices thereof,

an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitable suing out this injunction, and stipulating that the damages may be ascertained in such manner as the justice of this court shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

ASHLEY M. GOULD, *Justice*.

33

EXHIBIT "B."

Decree.

Filed March 23, 1908.

* * * * *

The above entitled cause coming on at this time for final hearing, and having been submitted to the court by the respective parties, through their solicitors, upon the pleadings and the evidence, and having been duly considered, it is thereupon by the court this 23rd

day of March, A. D. 1908, adjudged, ordered and decreed that the defendants The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, perpetually restrained and enjoined from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing or distributing through the mails, or in any other manner, any copies or copy of the American Federationist, or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize" or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating whether in writing or orally, any statement or notice of any kind or character whatsoever, calling attention to the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "Unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, 35 deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant and from threatening, or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in the complainant's product, either directly or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or re-

straining the complainant's business, trade or commerce, whether in the State of Missouri, or in other states and territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid. And it is further adjudged, ordered and decreed that the complainant recover against the defendants the costs of this suit, to be taxed by the clerk, and that it have execution therefor as at law.

HARRY M. CLABAUGH,
Chief Justice.

36 *Rule to Show Cause.*

Filed June 26, 1911.

* * * * *

Upon consideration of the report, this day filed, of Joseph J. Darlington, Daniel Davenport, and James M. Beck, the Committee appointed by the court's order of May 16th, 1911, to inquire whether the above named Samuel Gompers has been guilty of contempt in wilfully violating the terms of the injunctions issued by this court in the cause of the Buck's Stove & Range Company vs. The American Federation of Labor, Samuel Gompers et al., No. 27,305 Equity and upon consideration of the charges of contempt filed therewith it is thereupon by the court, this 26 day of June, A. D. 1911, ordered that the above named Samuel Gompers show cause on or before the 17th day of July 1911, at 10 o'clock A. M. in Equity Court No. 1, provided a copy of this rule and of said charges shall be served on him on or before the 6th day of July, 1911, why he should not be adjudged to be in contempt of the orders and decrees of the court in the said equity cause, and be punished for the same.

WRIGHT, *Justice.*

Marshal's Return.

Served copy of within rule to show cause on Samuel Gompers by service on Ralston, Siddons & Richardson attorneys for said Gompers, as per their acceptance of same.

July 7, 1911.

AULICK PALMER, *Marshal.*
S.

Endorsed.

Service of the within by copy acknowledged for Samuel Gompers as if served on him this 7th day of July, 1911.

RALSTON, SIDDONS & RICHARDSON.

Attys for Samuel Gompers.

Motion to Set Aside Return of Service.

Filed Jul- 17, 1911.

In the Supreme Court of the District of Columbia.

Eq. No. 30180.

In re SAMUEL GOMPERS.

Now comes the respondent, Samuel Gompers, and moves to set aside the return of service upon him as being insufficient under the terms of the rule, and for cause says that there has not been served upon him any copy of charges shown to have been verified, nor of exhibits made part thereof.

SAMUEL GOMPERS,
By RALSTON, SIDMONS & RICHARDSON,
His Attorneys.

DISTRICT OF COLUMBIA, ss.:

Jackson H. Ralston, being first duly sworn, on oath deposes and says that he is one of the attorneys for Samuel Gompers, respondent to the rule in the above entitled cause, and member of the firm of Ralston, Siddons and Richardson; that on July 7, 1911, there was served upon him a copy of a rule directed against Samuel Gompers and there was also served in connection therewith a copy of an unverified report, no exhibits being attached thereto; that acknowledgment of such service was made by him in the following form:

"Service of the within by copy acknowledged for Samuel Gompers as if served on him this 7th day of July, 1911.

RALSTON, SIDMONS & RICHARDSON,
Att'ys for Samuel Gompers."

38 That on July 13th, he went to the Court House, and examined the proceedings in the case and found that the report of the Committee, service of which had been had, was verified, and that there were attached thereto sundry exhibits, which were made part of the report. That there has never been served upon him, and he has never acknowledged service for Samuel Gompers, of any verified report or of any exhibits attached thereto, and no such service had upon or acknowledged by any member of his firm, or had, as he is informed, upon Samuel Gompers himself.

JACKSON H. RALSTON.

Subscribed and sworn to before me this 17th day of July, A. D. 1911.

J. R. YOUNG, *Clk.*
By E. J. McKEE, *Ass't Clk.*

Motion to Set Aside Report.

Filed Jul- 17, 1911.

* * * * *

Now comes Samuel Gompers, by Alton B. Parker, Ralston, Sid-
dons and Richardson, his attorneys, and moves the Court to set
aside the report herein submitted by Messrs. Daniel Davenport, J. J.
Darlington and James M. Beck, Committee, and for cause says that
the order referring the cause to said Committee called for the exer-
cise of judicial discretion, and that no one of said Committee
39 was in a position to exercise the same, and did not exercise
it; that every one had repeatedly, and prior to his appoint-
ment, expressed in positive terms his conviction of the guilt of the
respondents of the charges which they formulated subsequently
against them; that as evidence thereof, he attaches hereto and makes
part hereof, and marks Exhibit "A," a few from among many cita-
tions which might be made from the stenographic report of proceed-
ings in the contempt case of Buck's Stove and Range Co. vs. Gom-
pers, et al., showing expressions of opinion by said Committee.

Moreover the members of the said Committee while appearing on
the record for the Buck's Stove and Range Company in the suit out
of which these proceedings grow, were in fact employed by and paid
by the American Anti-Boycott Association and the National Manu-
facturers Association. The settlement, therefore, between the Buck's
Stove and Range Company and the American Federation of Labor
and Messrs. Gompers, Mitchell and Morrison, did not set them free
from the legal and moral obligation to carry on the *persecution* for
the benefit of the National Associations compensating them; hence
their action was not and could not be judicial. These facts we offer
and expect *by* prove of Mr. Davenport and other members of the
Committee.

SAMUEL GOMPERS.

DISTRICT OF COLUMBIA, ss:

Samuel Gompers, being first duly sworn, on oath says that he has
read the foregoing motion and exhibit by him subscribed, and
knows the contents thereof, that the same are true of his own
40 knowledge, except as to the matters therein stated on infor-
mation and belief, and that as to the same, he believes them
to be true.

SAMUEL GOMPERS.

Subscribed and sworn to before me this 17th day of July, A. D.
1911.

J. R. YOUNG, *Clk.*
By E. J. McKEE, *Ass't Clk.*

EXHIBIT "A."

In Argument Before Justice Gould, September 9, 1908, on Rule as to Contempt.

Mr. Davenport on page 14 of Record says:—

"A gentleman, it appears, like- to have Your Honor believe that he was in a comatose state when that rank defiance of this court and insult to this Court was committed in his presence and through this instrument."

This statement has reference to Mr. Mitchell.

Mr. Darlington in presenting contempt case before Judge Wright, November 16, 1908, after reading verbatim the injunction at page 6 of the record, says:

"That sounds like a good deal of detail; and yet the present condition of the case shows that none of the details were superfluous. Everyone of those details has been violated, as we claim, and it is practically undisputed in the case."

Pages 100 and 101. "As I say, so far as the facts are concerned, the mere statement of them, it seems to me, appears to be conclusive, that we have had here the most deliberate, persistent, defiant contempt of an order of the Court which the records of judicial proceedings will point us to, or which could be imagined."

Mr. Beek in presenting contempt case on November 16, 1908, at page 157 of the record says:

"I am not going, because your Honor has been most patient in this case, in any detail unto the testimony in the case, because I have a reasonable confidence that having read the injunction your Honor can, from the answer of these respondents alone, pass to judgment that they are guilty and flagrantly guilty of the contempt wherewith they are charged."

Page 158. "Because while of course the question of what judgment shall be pronounced by the Court is wholly for the Court, it seems to me that the Court is entitled to the views of Counsel as to whether this is a case where men have gone ahead under a mistaken sense of right under circumstances that palliate while they do not wholly excuse, or whether it be not the fact that here is a clear, conceded, flagrant, deliberate, avowed defiance of the order of this Court as well as a deliberate insult to its authority."

Page 165. "Unfortunately, as far as I can see, no such view is possible; because in this case, before ever Judge Gould pronounced his injunction, there was a deliberate, avowed statement of these men, notably of Mr. Gompers and Mr. Mitchell, that if any injunction were issued against the boycott they would not obey it. In other words, they asserted their rights to defy the decrees of a Court of this country, and they would take the consequence if need be."

Page 163. "First let me take the gentleman who, when he goes to New York and meets with the Civic Federation and other distinguished philanthropists, is always a law-abiding citizen, and who, when with his own organization, is never law-abiding—Mr. John Mitchell."

Page 179. "While the application for the injunction was pend-

43 ing Mr. Gompers took another very important public occasion to breathe his defiance to the action of this Court, which he clearly anticipated was about to be made."

Page 180. "Of course I might here interject the remark that that which he has said is in the highest degree both libelous and seditious; and although his qualification is not needed for the assertion of our rights to our injunction, yet if the action of himself and his associates is not deliberate sedition, then I do not understand the meaning of the word 'sedition.'"

Page 182. "There is the deliberate statement that no matter what the injunction might be, they would have an absolute right to go ahead and disregard it. If that is not pretty near sedition, just as much as the action of the State of South Carolina in nullifying the Federal Constitution, I do not understand what sedition is. And I am not at all sure that the sedition of the "master of a million minds," in this intangible and subterranean way, is not a great deal more dangerous than an armed revolt. An armed revolt you can put down; but the subterranean working of this conspiracy is, to some extent, and perhaps to a very considerable extent, beyond even the remedial power of the Courts."

Page 183. "The result was he resorted to perjury—flat perjury. In fact, this record is slimy—it is trailed over with the slime of perjury. That is a pretty harsh term, but it is true. They commenced with perjury; they filed an answer in this court in which they stated that they had not since the suit was brought put the Buck's Stove and Range Company on the 'unfair' list, and 44 they had no intention to do it. And yet the very numbers, the October and November, was it not, and December numbers—All three of them had the unfair list."

Page 191. "He allowed those thousand copies to go all through the country; and in that way, by passive action, he violated the injunction as to those copies."

Page 193. "And therefore I think it is a fair argument that if Mr. Gompers, in anticipation of our entering in the bond, did that which made the injunction inoperative by consequences which, occurring after the bond was entered, had their original causation in Gompers' acts before the bond was entered, he committed a contempt of court."

Page 209. "And that resolution surpasses all previous attempts (unless I except Mr. Gompers' profane expression) to insult this Court and to affront its dignity; because, instead of simply stating: "We are going to keep up the boycott," it deliberately draws the issue between this Court and this self constituted Court of labor."

45 *Motion for Bill of Particulars.*

Filed Jul- 17, 1911.

Now comes the respondent, by Alton B. Parker and Ralston, Sidons and Richardson, his attorneys and moves the court for a Bill of Particulars of the alleged contempts charged against him, and

prays that the complainant committee may be required to furnish the details of their complaint as follows:

Under Paragraph I.

The number and dates when, places where and by whom of the depositing in the mails of the January, 1908, American Federationist, and of their delivery to the American News Company.

The dates when, the places where and the persons to whom the Washington News Company made any deliveries of the said January, 1908, Federationist.

Under Paragraph II.

The dates when, the places where and the persons to whom the respondent Samuel Gompers caused or permitted the circulation through the United States mails, or otherwise, of the January, 1908, Federationist.

Under Paragraph III.

The dates when, the places where and the persons to whom the respondent Samuel Gompers caused or permitted the circulation of any copies of the printed proceedings of the Convention of the American Federation of Labor held at Norfolk, Virginia, in November, 1907.

46

Under Paragraph IV.

The dates when, the places where and the persons to whom said Samuel Gompers caused or permitted the circulation of the February, 1908, number of the American Federationist. The connection or association of the respondent Samuel Gompers with any of the articles or editorials referred to in said paragraph other than the American Federationist, and the specification of the articles and editorials for which it is claimed or intended to be charged that the said Samuel Gompers was in any wise responsible, and when and where the same were published.

Under Paragraph V.

The dates when, the places where and the persons to whom the respondent Samuel Gompers permitted any copies of the paper called an "Urgent Appeal for Financial Aid in Defense of Free Press and Free Speech," or of the number of the February, 1908, Federationist, containing the same or other language, quoted in said Paragraph, to be circulated.

The dates when the places where and the persons to whom the said Samuel Gompers caused the "Urgent Appeal" and the editorial referred to in Paragraph III to be circulated.

The dates when, places where and the persons to whom said Samuel Gompers caused to be reprinted and circulated the editorial prefixed with a copy of the injunction printed in the February, 1908, Federationist, as set out in Paragraph IV.

Under Paragraph VI.

47 The date when said Samuel Gompers caused to be published in the editorial columns of the American Federationist the language quoted in said Paragraph.

Under Paragraph VII.

The date when and the places where said respondent Samuel Gompers published the April 1908, copy of the American Federationist, containing the language cited in said Paragraph.

Under Paragraph IX.

The exact date when the respondent Samuel Gompers delivered a public address in which he is charged with using the language quoted in said Paragraph.

Under Paragraph X.

The date when, the places where the respondent Samuel Gompers wrote and published the language purporting to have been published in the July, 1908, issue of the American Federationist.

Under Paragraph XI.

The date when and the place where the respondent Gompers published in the September, 1908, issue of the American Federationist the language attributed to him in said Paragraph.

ALTON B. PARKER,
RALSTON, SIDONS &
RICHARDSON,
Attorneys for Samuel Gompers.

DISTRICT OF COLUMBIA, ss:

Samuel Gompers, being first duly sworn, on oath says that he is a respondent in the above entitled cause; that he has carefully read so much of the report as has been served upon him; that he is charged therein in vague terms, and to unknown persons and at unspecified times with contempt of the order of the court; 48 that he is unable properly to plead herein unless the charges be made definite as above moved; that unless so made definite, he will be unable on trial to present in many, if not all instances, controverting testimony. That he directed on Dec. 23, 1907, that no copies of the Jan. 1908 Federationist should be circulated and circulated none himself thereafter; that he never authorized or permitted the circulation of any copies of the January, 1908 Federationist after December 23, 1907, and if any took place it was without his knowledge and against his instructions and does not know the supposed offenses to which Paragraph II relates.

SAMUEL GOMPERS.

Sworn to before me this 24th day of July A. D. 1911.

J. R. YOUNG, *Clerk*,
By E. J. McKEE, *Ass't Clk.*

Subscribed and sworn to before me, this 17th day of July, A. D. 1911.

J. R. YOUNG, *Clerk*,
By E. J. McKEE, *Ass't Clk.*

49

Motion to Dismiss.

Filed Jul- 17, 1911.

* * * * *

Now comes Samuel Gompers by Alton B. Parker, Ralston, Siddons and Richardson, his attorneys, and moves the Court that this proceeding be dismissed, and for cause says that the order of injunction which is alleged to have been violated by this defendant was not made by Justice Wright, before whom this proceeding is brought, that the said Justice Wright was not when the said order was made a member of that branch of the Supreme Court of the District of Columbia by which the said order was made, and is not now a member thereof, and that the said Justice Wright has no jurisdiction or authority to preside over this proceeding, and that this proceeding is not properly before the said Justice Wright.

ALTON B. PARKER,
RALSTON, SIDDONS AND
RICHARDSON,

Attorneys for the Defendant Samuel Gompers.

Dated July 17, 1911.

50

Filed July 21, 1911.

OFFICE OF THE UNITED STATES ATTORNEY,

DISTRICT OF COLUMBIA,

WASHINGTON, D. C., July 21, 1911.

Honorable Daniel Thew Wright, Associate Justice Supreme Court of the District of Columbia, Washington, D. C.

SIR: I regret that unavoidable absence from the city makes it impossible for me to be present at the opening of Court on Monday morning next, to make response to the suggestion of the Court that I be added to the Committee recently appointed by the Court to present to it charges of alleged contempt against Samuel Gompers, Frank Morrison, and John Mitchell. Your Honor's suggestion followed the overruling of a motion made by the respondents to amend the order directing J. J. Darlington, Daniel Davenport and James M. Beck to prosecute the charges of contempt against the respondents, by striking out the names of these gentlemen, and substituting therefor the name of the District Attorney of the United States for the District of Columbia.

I consider that, as District Attorney, there is no duty incumbent upon me to take part in the proceedings against these respondents for their alleged contempt. Nor, do I think, with entire respect to Your Honor, that there is in the Court any authority to designate or appoint me, as District Attorney, a member of the Committee to act in this matter.

I must, therefore, as United States Attorney for the District of Columbia, respectfully decline to take part in these proceedings at this time.

As an attorney and officer of this Court, however, I am in duty bound to observe the wishes of the Court, should Your Honor desire my personal assistance in the punishment of those said to be guilty of contempt of its dignity and authority.

Such service would not embarrass me, nor interfere with the performance of my public duties.

Very respectfully,

CLARENCE R. WILSON,
United States Attorney, D. C.

(Endorsed:) File. Wright.

52 *Affidavit of Joseph J. Darlington.*

Filed Jul- 24, 1911.

* * * * *

DISTRICT OF COLUMBIA, ss:

I, Joseph J. Darlington, with reference to a certain affidavit of the above respondent filed in this cause in support of a motion to set aside the report herein submitted by Daniel Davenport, James M. Beck and myself, Committee, on oath say that my employment as counsel for the Buck's Stove and Range Company in its litigation with the American Federation of Labor and others was effected by James M. Beck, Esq., one of the counsel for that Company; that, at the time of said employment and for many months afterwards, I was not aware of the existence of any such organization as the American Anti-Boycott Association or the National Manufacturers' Association; that, in the course of said litigation, I received several remittances in aid of its prosecution in the form of checks, drawn by "Henry A. Potter, Treasurer," which checks, at a comparatively late period in the progress of the litigation, I learned had been drawn by him in his capacity as Treasurer of the Anti-Boycott Association, under an agreement between that Association and its members by which it was obligated to defray, either wholly or in part, the expenses of the litigation in which they might become involved, growing out of boycotts; that I have at no time had any conferences or communications with either the American Anti-Boycott Association or with the National Manufacturers' Association,

53 and that I have received no instructions, advices or suggestions of any kind from either of them, directly or indirectly, in regard to the conduct of the said litigation, my confer-

ences, communications and instructions in that regard being wholly with the Buck's Stove and Range Company, through its President; that the services which I undertook to render in the said litigation, and my connection therewith, completely terminated with the arguments therein before the Supreme Court of the United States at its October, 1910, Term: that, neither at the time of my appointment as a member of the Committee in this proceeding to report to the court whether there was reasonable cause to believe that the respondent was guilty of contempt of court in the violation of its injunctions, and in that event to prosecute a charge of contempt against him, nor subsequently thereto, was I, or have I been, in the employ, for any purpose, of the American Anti-Boycott Association, the National Manufacturers' Association or the Buck's Stove & Range Company, and that, contrary to the allegation of the said affidavit my appearance and participation in the arguments before the Supreme Court of the United States in the matter of the said litigation was pursuant to instructions of the Buck's Stove and Range Company, through its President, that its adjustment with the American Federation of Labor was not intended to interfere in any manner with the prosecution of the said litigation. So far from being biased or prejudiced against the respondent, or hostile to him, I cordially united in the suggestion of the Committee in their Report that, since the Supreme Court of the United States has now

decided adversely to the position contended for *him* him, 54 and in view of which he theretofore had contended that he was rightfully entitled to disobey the injunctions of this court, he might be willing to admit his error and give assurances of future submission to the court, which suggestion was made in the hope that, as a law-abiding citizen, the respondent would be willing to accept the decision of the highest tribunal known to the Constitution and laws of his country as conclusive of the question, and thereby render further prosecution against him unnecessary. My appointment as a member of the Committee was in no manner in pursuance of any application or desire upon my part, and, while ready to perform any duty to which I am assigned by the Court, I have at all times been more than willing that some other member of the Bar should be designated in my stead for the prosecution of the charges of contempt against the respondent.

The connection of Mr. James M. Beck, who is now absent from the country, with the litigation between the Buck's Stove and Range Company and The American Federation of Labor, the respondent and others, terminated with his argument of the contempt proceeding before the Court of Appeals, in the Month of April, 1909, since which time, according to my best knowledge, information and belief, Mr. Beck has sustained no professional or other relation toward the Buck's Stove and Range Company, the American Anti-Boycott Association of the National Manufacturers' Association, if, in fact, he ever sustained any relation to any of the said parties other than the said Buck's Stove and Range Company.

JOSEPH J. DARLINGTON.

55 Subscribed and sworn to before me this 24th day of July,
A. D. 1911.

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM, *Ass't Clk*.

Affidavit of Daniel Davenport.

Filed July 24, 1911.

* * * * *

DISTRICT OF COLUMBIA, ss:

I, Daniel Davenport, on oath say that I am, and for the past eight years have been, employed by the American Anti-Boycott Association as its counsel, and that in that capacity I was employed by it to assist in the presentation of the suit of the Buck's Stove & Range Company for injunction against the American Federation of Labor et al., in Equity Cause No. 27,305 in the Supreme Court of the District of Columbia, but that my connection with that controversy, and that of the American Anti-Boycott Association according to my best knowledge, information and belief, terminated with the decision in that litigation by the Supreme Court of the United States at its October 1910, term, and that I neither have, nor have had, any interest or connection whatsoever with the pending proceedings in contempt against the above named respondent other than such as has devolved upon me by my appointment under the order of this Court bearing date the 16th day of May, A. D. 1911.

56 as a member of a Committee to ascertain and report to the court whether there was reasonable cause to believe respondent guilty of contempt in the premises, and in that event, to formulate and prosecute charges of contempt against him. I further on oath say that I am not, and never was, counsel for the National Manufacturers' Association, in any matter whatsoever, and, with respect to the Buck's Stove & Range Company litigation, that I have never been employed by it for any service, or in any way in connection therewith.

So far from maintaining any hostile bias or prejudice against the respondent, I shall be more than pleased by such acknowledgment by him of his error in disobeying the injunctions of the court, and by such assurance of his submission to the orders and decrees of the court in the future, as in the judgment of the court may be a sufficient vindication of its authority and of the majesty of the law, and may render unnecessary the further prosecution of respondent because of his said disobedience. I am more than willing to be relieved of the duty of prosecuting the said charges, by the substitution of some other member of the Bar in my stead for that purpose, if the Answer of the respondent shall render further prosecution necessary and it shall be agreeable to the court to make such substitution.

DANIEL DAVENPORT.

Subscribed and sworn to before me this 24th day of July, A. D. 1911.

J. R. YOUNG, *Clerk*.

By F. E. CUNNINGHAM, *Ass't Clerk*.

57

Affidavit Opposing Motion for Bill of Particulars.

Filed July 24, 1911.

* * * * *

DISTRICT OF COLUMBIA, ss:

I—H. I, Daniel Davenport, on oath say that the above respondent, Samuel Gompers, admitted of record in Equity Cause No. 27,705 in the Supreme Court of the District of Columbia, that he was and is connected with the American Federationist, which is the official organ of the American Federation of Labor, by virtue of his being president of the said Federation, and by virtue of the fact that he was editor of the said paper, and that he was responsible for its editorial expressions, and its contributed articles—"for them, and all else, I am responsible." As is further shown by the record in the said cause, in the deposition of Frank Morrison therein, the office of the said American Federationist contains a record of the persons to whom copies of the January, 1908, Federationist were mailed, and the dates of the mailing thereof, and that a number of copies of the said January, 1908, Federationist were distributed partly by sales over the counter and partly by mailing the same to individuals in different parts of the United States, as shown by the records of its said office, which records are directly and easily accessible to the above respondent, and are not so to the Committee appointed by the

58 Court to prosecute the charges of contempt against him; that the record of the said Equity Cause further shows payments by the American Federation of Labor, of which the respondent was and is the head, and the responsible and directing officer, of sundry sums of money to the Post Office Department in the City of Washington, between the 23rd day of December, 1907, and the issuance of the February, 1908, Federationist, for distribution of copies of the Federationist through the mails as second-class matter, the dates of which distribution and the persons to whom they were distributed being, also, more readily and easily ascertainable by the respondent than by the said Committee.

It further appears in the record of the said Equity Cause, in the testimony of the above respondent himself, that on December 22, 1907, when he knew that the injunction in the said cause bearing date December 17, 1907, had been granted, and when he supposed that the Buck's Stove & Range Company might give the required injunction bond to render the same operative, he placed a large number of copies of the January, 1908, Federationist, the publication of which he had caused to be hurried up in advance of its usual date of issue, in the hands of the American News Company for distribution, and without informing that Company that an injunction which

would prohibit their distribution had been issued and that an injunction bond, rendering it operative, was likely soon to be filed, and that, although he learned the next day that the bond had been filed, he did not inform the American News Company of that fact, or take any steps to stop the further distribution of the said copies.

59 The dates when, the places where, and the persons to whom, the said Washington News Company made deliveries of copies of the said January, 1908, Federationist, if essential, to the respondent's defense, are more easily and readily ascertainable by him from the American News Company, his own agent in the premises, than they can be ascertained or furnished by the said Committee.

III. With respect to the circulation of copies of the printed Proceedings of the Convention of the American Federation of Labor at Norfolk, Va., in November, 1907, subsequently to the 23d day of December, A. D. 1907, the respondent testified in the above cause that bound copies of the said Proceedings were received at the office of the American Federationist the latter part of December, 1907, or the early part of January, 1908; that if, as was the fact, Frank Morrison testified they were received on December 31st, he had no doubt that that was the correct date; that the usual course with the said printed Proceedings, after they were received, was to distribute them among delegates to the Convention, one copy to each affiliated International Union and to others; that he knew the said Proceedings contained references to the Buck's Stove & Range Company as being on the "Unfair" and "We Don't Patronize" list of the American Federation of Labor, that he expected the usual course would be pursued to distribute those copies, and that he took no steps to prevent such distribution. Frank Morrison, Secretary of the Federation, and by whom directly their distribution was made, testified in
60 said Equity Cause that more than 7,000 copies of the said Proceedings were distributed, on and after December 31, 1907, and I am informed, believe, and therefore aver, that, if the dates when, the places where, and the persons to whom, distribution of the said Proceedings was made is material to the respondent's defense, the said particulars are far more easily and readily obtainable by the respondent himself, from his said fellow-official and office associate Frank Morrison, than they can be furnished by the said Committee.

IV-V. With respect to (a) the publication and circulation of the February, 1908, number of the American Federationist, (b) the "Urgent Appeal for Financial Aid in Defense of Free Press and Free Speech," and (c) the editorial referred to in Paragraph III of the Report in respect to the respondent, I say as follows:

The respondent testified under oath in the said Equity Cause, as will appear from an examination of the Record therein, that he was president of the American Federation of Labor, the editor of the American Federationist, and that he was responsible for its editorial expressions, its contributed articles, and for all else that appeared in that paper. The said respondent further testified under oath in the said cause, as will appear from the Record therein,

that he caused a re-print of that editorial, from the February, 1908, American Federationist, to be made in connection with the said "Urgent Appeal" circular; that he sent it with the circular, and that he issued and sent those circulars to the secretaries of the Local Unions of the American Federation of Labor, to the number of about 27,000. As will further appear from Exhibit A. H.

61 No. 3 in the Record of the said Equity Cause, there was printed with and circulated as a part of the said circular the editorial referred to in Paragraph III of the Report in Respect to the said respondent. Further, with respect to the circulation of each of the said publications, all of which were charged against the respondent in the contempt proceedings instituted in said Equity Cause by the Buck's Stove & Range Company, respondent published in the January, 1909, issue of the American Federationist, an address made by him in the City of Washington, in the Month of November, 1908, in which, referring to the said charges, he said, as set forth in Paragraph XV of the said Report:

"The things I have been charged with I did. I have not denied them. I have discussed them upon the platform, as I discuss them here. I have written circulars about them. Secretary Morrison sent them out, and I ask you now to place yourself in my position, what would you do?"

Respondent is not, as the Committee is advised, entitled to call upon it for the designation of the dates when, the places where, or the persons to whom, he caused or permitted the circulation of the said publications, in view of his own sworn admission that he did these several things, and the knowledge of the dates, places and persons therefore being necessarily more within his own knowledge than it can be within that of the Committee.

VI, VII, X and XI. With respect to the motion for a bill of particulars as to the dates when, places where and persons to whom, respondent wrote, published, and circulated the editorials and publications contained in the American Federationist of March,

62 April, and July, 1908, I on oath say that, as hereinbefore set forth, respondent stated under oath in said Equity Cause, as shown by the Record therein, that he was and is the editor of the said American Federationist, and responsible for all that appears therein; and, further that in his answer to the rule to show cause issued in the said cause upon the petition of the Buck's Stove & Range Company, he answered under oath that he had made the said publications, and each of them, in the American Federationist, in view of which facts, admitted by him under oath, the dates when, the places where and the persons to whom he did so, are, as I am advised, necessarily more within his knowledge than they can be within that of the said Committee, and he is not entitled to require the latter to furnish him with the bill of particulars setting forth the facts thus necessarily within his own knowledge.

DANIEL DAVENPORT.

Subscribed and sworn to before me this 24th day of July, 1911.

J. R. YOUNG, *Clk.*

By F. E. CUNNINGHAM, *Ass't Clk.*

63 *Motion to Substitute United States District Attorney for Committee.*

Filed July 24, 1911.

* * * * *

Now comes Samuel Gompers by Alton B. Parker, Ralston, Siddons and Richardson, his attorneys, and moves the Court that the order heretofore made in this proceeding empowering J. J. Darlington, Daniel Davenport and James M. Beck, Esqs., to prosecute the charges of contempt against this defendant be amended by striking out the names of the said Darlington, Davenport and Beck and substituting the Attorney of the United States for the District of Columbia, and for cause says that the said Darlington, Davenport and Beck, by reason of their employment as attorneys for the plaintiff in the suit of the Buck Stove and Range Company against Gompers and others, are necessarily biased and prejudiced against this defendant and his co-defendants and are not properly qualified to prosecute the said charges of contempt, and that their appointment by the Court to prosecute the said charges was unlawful and contrary to a statute expressly providing that criminal prosecutions in the District of Columbia shall be conducted by the Attorney of the United States for the District of Columbia or his assistants.

ALTON B. PARKER,
RALSTON, SIDMONS &
RICHARDSON,

Attorneys for the Defendant Samuel Gompers.

Dated July 17, 1911.

64 *Pleas of Samuel Gompers, Respondent.*

Filed July 24, 1911.

* * * * *

Samuel Gompers, respondent, for plea to the charges against him, says:

1. That he is not guilty of them, or any of them.
2. That the matters and things complained of in paragraphs one to ten inclusive did not occur within three years before the bringing of this action.
3. That the matters and things complained of in paragraphs one to ten inclusive occurred, if at all, as the court well knew, more than three years before the commencement of this action, and that any complaint with relation thereto is barred because of laches on the part of the court or judges, assumed or alleged to have been affected thereby.
4. That the delay in the presentation of the charges in this action

has been so unreasonable that this respondent should not be called upon to answer them.

ALTON B. PARKER,
RALSTON, SIDMONS &
RICHARDSON,
Attorneys for Respondent.

65 *Order Appointing Clarence R. Wilson to Assist in Presentation of Charges.*

Filed July 24, 1911.

* * * * * *

This cause coming on to be heard further upon the motion of the respondent to amend the order "Empowering J. J. Darlington, Daniel Davenport and James M. Beck, Esqrs. to prosecute the charges of contempt against this defendant be amended by striking out the names of the said Darlington, Davenport and Beck and substituting the Attorney of the United States for the District of Columbia," and the Court having heard read the communication of Hon. Clarence R. Wilson, United States District Attorney herein this day filed, and being of the opinion that it is without power to designate Mr. Wilson to take part in his official capacity; it is ordered that Hon. Clarence R. Wilson, a member of the Bar, be and he is hereby authorized and designated together with Messrs. Darlington, Davenport and Beck to present to the Court the said charges, according to right and justice in the premises.

WRIGHT.

66 *Motion to Require Sworn Answer to Charges.*

Filed July 27, 1911.

* * * * * *

Now come Joseph J. Darlington, Daniel Davenport, James M. Beck and Clarence R. Wilson, Committee appointed by the Court to prosecute charges for contempt against the above named respondent, and move the court for an order requiring the said respondent, at his election, either to answer under oath the charges of contempt filed against him in the above cause on the 25th day of June, 1911, or to make specific answer, under oath, to the interrogatories in relation thereto annexed to and made a part of this motion.

J. J. DARLINGTON,
DAN'L DAVENPORT,
For Committee.

Messrs. Alton B. Parker and Ralston & Siddons, Solicitors for Respondent Samuel Gompers:

Please take notice that on Monday next, the 31st day of July, 1911, at ten o'clock A. M., or so soon thereafter as counsel can be heard, the above motion will be presented to the court for its action.

J. J. DARLINGTON,
DANIEL DAVENPORT,
For Committee.

Service of the above motion and notice, with the accompanying interrogatories, accepted this 27th day of July, 1911.

RALSTON, SIDDON &
RICHARDSON,

Respondents' Att'ys.

* * * * *

67 *Interrogatories to be Propounded to the Respondent Samuel Gompers.*

1. State whether, on December 17, 1907, you were, and have since continued to be President of the American Federation of Labor and the editor of the American Federationist.

2. State whether after knowledge by you of the passage of the decree of injunction of December 18, 1907, in the case of the Buck's Stove & Range Company vs. The American Federation of Labor, yourself and others, No. 27,305, Equity, in the Supreme Court of the District of Columbia, you hurried the issuance of the January 1908 number of the American Federationist, in advance of the usual time therefor, caused thousands of copies thereof to be deposited in the United States mails on the 22d day of January, 1907, and caused a large number, and, if so, how many, of the copies of the January, 1908, American Federationist to be delivered to the American News Company for distribution, for the purpose of securing the circulation of the said January, 1908, number of the American Federationist, with the name of the Buck's Stove and Range Company mentioned therein in connection with the "We Don't Patronize" or the "Unfair" list of the American Federation of Labor, before the injunction of December 18, 1907, should become operative by the filing of an injunction bond in the cause as required by said decree, as set out in Paragraph I of the charges of contempt filed against you in the above entitled cause on the 26th day of June, 1911.

68 3. State whether or not you learned, on or before December 24, 1907, that an injunction bond had been filed in the said Equity Cause, and that the said injunction had accordingly become operative.

4. State what steps, if any, you took, then or subsequently, to stop the further circulation of the copies of the said January, 1908, number of the American Federationist by the American News Company, which you had placed in its hands for the purpose of being circulated.

5. State whether ten copies of the January, 1908, Federationist were not distributed from the office of the American Federationist to the New England News Company on December 30, 1907; whether one copy was not so distributed to the Chapin News Company on March 14, 1908; whether one copy was not mailed from that office to Ed. H. Heilman, St. Louis, Mo., on January 2, 1908, another copy to R. P. Pettipiece, Vancouver, British Columbia, on January 9, 1908, another copy in January to Dr. U. M. Weidman, South Manchester, Conn.; on January 23, 1908, one copy to W. B. Pater-

son, Brooklyn, N. Y.; one copy to H. C. Rogers, Chicago Daily News, Chicago, Ill.; one copy, on January 30th, to William Delahanty, of New York City; one copy, on February 4th, to W. H. Haskins, Coshocton, Ohio; one copy each of the January and February, 1908, American Federationist to William H. Guild & Company on February 8th; one copy each of the January and February, 1908, American Federationist to Samuel H. Ranch, Grand Rapids, Mich., on February 18, 1908; one copy each of the January, February and March, 1908, Federationist to the Public Library, Cleveland, Ohio, on March 3, 1908; one copy of the January, 1908, American Federationist, on March 6, 1908, to S. E. Far-

69 quher, Earlham, Ind., and whether the fact of the distribution of each of the above named copies of the American Federationist, for the months named, to the parties and upon the dates in this interrogatory specified, was not contemporaneously entered upon the records in the office of the American Federationist of which you were editor, and which records were at all times subject to your inspection and control.

6. State whether, subsequently to the 23d day of December, 1907, a large number, and, if so, how many, of copies of the printed Proceedings of the Convention of the American Federation of Labor held at Norfolk, Va., in the month of November, 1907, were received at the Offices of the American Federation of Labor, in the City of Washington, District of Columbia, of which you were President, and at which you were in control of its affairs, and whether a large number, and, if so, how many, of the said copies of the said printed Proceedings were thereafter circulated in various parts of the United States. State, also, whether the said printed Proceedings of the said Norfolk Convention contained the report and the written editorial set forth in sub-paragraphs (a) and (b) of Paragraph III of the charges of contempt filed against you in the above entitled cause on the said 26th day of June, 1911.

7. State whether you published in the February, 1908, number of the American Federationist the editorial set forth in Paragraph IV of the charges of contempt against you filed in said Equity Cause on June 26, 1911, and whether the information you wished to convey by the said editorial was, as alleged in said Paragraph,

that those who violated the terms of the injunction could
70 be punished only in case they thereafter came within the District of Columbia.

8. State whether you united with Frank Morrison and others in causing to be printed and widely circulated a large number, and, if so, how many, of copies of the paper designated "An Urgent Appeal for Financial Aid in Defense of Free Press and Free Speech," which contained the language set forth in Paragraph V of the charges of contempt against you filed in the above entitled cause on June 26th, 1911, and whether you caused or permitted the said editorial to be printed in the February, 1908, issue of the American Federationist. If so, state how many copies of the February 1908, copy of the American Federationist containing the said "Urgent Appeal" were printed, published and circulated in various parts of

the United States, and in what parts of the United States they were so circulated.

9. State whether you caused, permitted or co-operated in causing to be re-printed, or to be circulated with the said "Urgent Appeal" copies and, if so, how many of the editorial contained in the February, 1908, Federationist, referred to in Paragraph III, and containing the language therein set forth.

10. State whether you published in the columns of the March, 1908, number of the American Federationist the statement set forth in Paragraph VI of the said charges of contempt filed against you in the above entitled cause, namely:

"It should be borne in mind that there is no law, ay, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

11. State whether you published editorially in the columns of the April, 1908, number of the American Federationist, the language set forth in Paragraph VII of the said charges of contempt against you so as aforesaid filed in the above entitled cause, and how many copies of the said April number you caused or permitted to be circulated; and where.

12. State whether, in a public address delivered by you in the City of New York on April 19, 1908, you used the language charged in Paragraph VIII of the said charges of contempt against you, substantially therein set forth.

13. State whether, in a public address delivered by you in the City of Chicago, Ill., on or about the first day of May, 1908, you used the language charged in Paragraph IX of the said charges of contempt against you, substantially therein set forth.

14. State whether, in the July, 1908, issue of the American Federationist, you published editorially the language set forth in Paragraph X of the said charges of contempt against you filed on June 26, 1911, and how many copies of the said July number you caused or permitted to be circulated; and where.

15. State whether you wrote and published in the September, 1908, issue of the American Federationist the language set forth in Paragraph XI of the said charges of contempt against you, and how many copies of the said September number you caused or permitted to be circulated; and where.

16. State whether in your report to the Executive Council of the American Federation of Labor bearing date the 9th day of September, 1908, you used the language set forth in Paragraph XII of the said charges of contempt against you, and whether you thereafter caused or permitted the same to be published in the American Federationist for the month of November, 1908. If so, state how many copies of the November, 1908, issue of the American Federationist were published, and how widely they were disseminated.

17. State whether, in a public address made by you in the City of Indianapolis, in the State of Indiana, on the 29th day of September, 1908, you used the language charged in Paragraph XIII

of the said charges of contempt against you, substantially as therein set forth.

18. State whether in a public address delivered by you in the City of Baltimore, State of Maryland, on or about the 26th day of October, 1908, you used the language charged in Paragraph XIV of the said charges of contempt against you, substantially as therein set forth.

19. State whether, at a public reception tendered you by the labor organizations of the City of Washington, District of Columbia, in the month of November, 1908, you used the language set out in Paragraph XV of the said charges of contempt against you. State, also, whether you caused or permitted the said language to be published in the January, 1909, American Federationist, and, if so, how many copies of the same were by you caused or permitted to be circulated, and how widely.

73 20. State whether, in the report made by you to the Convention of the American Federation of Labor held in November 1909, you used the language set forth in Paragraph XVI of the said charges of contempt against you filed in the above entitled Equity Cause on the 26th day of June, 1911.

JOSEPH J. DARLINGTON,

For Committee.

Plea of Former Jeopardy.

Filed July 31, 1911.

* * * * *

Now comes the respondent, Samuel Gompers, in his own person and prays judgment of the charges filed against him and that they may be quashed because he says that charges of the same tenor and effect were preferred against him by the Buck's Stove and Range Company in Equity cause No. 27,305, and filed July 20, 1908, and were prosecuted before the Supreme Court of the District of Columbia, sitting in Equity in said cause, and that he was put upon his trial before said court and a hearing was had thereon, and the court adjudged him guilty thereof, and sentenced him to a term of twelve months in jail, by a decree dated December 23, 1908, and this he is ready to verify, and wherefore, he prays judgment of the charges filed against him, and that the same may be quashed.

SAMUEL GOMPERS.

74 Subscribed and sworn to before me this 25th day of July, 1911.

[SEAL.]

ROBT. A. BOSWELL,
Notary Public, D. C.

Order Fixing Time.

Filed July 31, 1911.

* * * * *

Upon consideration of the motion of Joseph J. Darlington, Daniel Davenport, James M. Beck and Clarence R. Wilson, Committee, filed herein on the 27th day of July, A. D. 1911, requiring the above named respondent Samuel Gompers to answer under oath the charges of contempt filed against him in the above entitled cause on the 23th day of June, 1911, or to make specific answer under oath to the interrogatories in relation thereto annexed to the said motion, and the same having been argued on behalf of the said Committee and by the solicitors of the said respondent, it is by the Court, this 31st day of July, A. D. 1911, ordered that the said Samuel Gompers file in this cause within 20 days after the date hereof, such answer, affidavit or other statement or statements under oath, if any, as he may desire to offer to the court in denial of or reply to the said charges of contempt, under oath, so filed against him in the above entitled cause, or tending to show why he should not be adjudged to be in contempt of the orders and decrees of this Court in Equity Cause No. 27,305 as therein charged, and be punished for the same.

75

Answer of Samuel Gompers.

Filed August 19, 1911.

* * * * *

Samuel Gompers, for answer to the charges against him, says—

1. That he is not guilty of them or any of them.
2. That the matters and things complained of in paragraphs one to ten inclusive, and in each of said paragraphs, did not occur within three years before the bringing of this action.
3. That the matters and things complained of in paragraphs one to four inclusive, and in each of them, occurred, if at all, as the court well knew, more than three years before the commencement of this action, and that any complaint with relation thereto is barred because of laches on the part of the court or judges assumed or alleged to have been affected thereby.
4. That the delay in the presentation of the charges in this action has been so unreasonable that this respondent should not be called upon to answer them.

SAMUEL GOMPERS.

DISTRICT OF COLUMBIA, ss:

Samuel Gompers, being first duly sworn, on oath says that he has read the foregoing answer by him signed and knows the contents thereof. That the same are true to the best of his knowledge and belief, except as to the matters and things therein stated upon

information and belief, and that as to the same, he believes them to be true.

SAM'L GOMPERS.

76 Subscribed and sworn to before me this 28th day of July,
A. D. 1911.

ROBERT A. BOSWELL,
Notary Public.

[SEAL.]

77

Motion to Dismiss Charges.

Filed October 12, 1911.

* * * * *

Now comes Samuel Gompers, respondent, by Ralston, Siddons and Richardson, and Alton B. Parker, his attorneys, and moves the Court to dismiss the information and charges filed against him, and for cause says:

1. There has been no proper replication filed to the plea of the statute of limitations presented by him, it appearing upon the face of the said information and charges that many of the actions complained of therein, occurred more than three years before the filing of said information and charges.

2. No pleading has been filed herein offering any justification or excuse for the laches in bringing this proceeding on the part of the Court assumed or alleged to have been treated with contempt by the actions with which respondent is charged, in the aforesaid information and charges, as set forth in this respondent's answer filed herein.

3. No pleading of any kind has been filed to account for the unreasonable delay in the institution of these proceedings, as alleged in this respondent's answer filed herein.

SAMUEL GOMPERS,
By ALTON B. PARKER,
RALSTON, SIDDONS &
RICHARDSON,
Attorneys.

Service accepted October 12, 1911.

J. J. DARLINGTON,
For Committee.

78

Order Overruling Motion to Dismiss.

Filed November 23, 1911.

* * * * *

Upon consideration of the motion of the respondent in the above entitled cause to dismiss the proceedings therein, and of the motion made by the committee to appoint an examiner to take the testi-

mony in the cause, and after argument on behalf of the committee and by counsel for the respondent and consideration thereof it is by the court, this 23d day of November, 1911, ordered:

1. That the motion of the respondent to dismiss the proceedings in this case against him be, and the same hereby is, denied.

2. That three days be allowed the committee and counsel for the respondent within which to agree upon a commissioner to take testimony in the cause; it being further ordered that the examination of witnesses in open court may be allowed with respect to any witnesses for whose examination in such manner application shall be made to the court.

WRIGHT.

To the making of the above order and to each and every paragraph thereof in their several order the above named respondent by his counsel at the time in open court objects and excepts.

79 In the Supreme Court of the District of Columbia.

In Equity. No. 30180.

In the Matter of SAMUEL GOMPERS, JOHN MITCHELL, FRANK MORRISON.

WASHINGTON, D. C., November 23, 1911.

The Court met in General Term.

Present: The Chief Justice and all the Associate Justices.

Opinion by Mr. Justice Wright.

The charges of contempt, verified by affidavit, were filed on June 26, 1911, setting forth sixteen different and distinct specifications, charging the first about December 24, 1907; the last, November 1908.

Upon August 19, 1911, the respondents filed this answer:

"Answer of Samuel Gompers, Respondent."

Samuel Gompers for answer to the charges against him, says—

1. That he is not guilty of them or any of them.

2. That the matters and things complained of in paragraphs one to ten inclusive, and in each of said paragraphs, did not occur within three years before the bringing of this action.

80 3. That the matters and things complained of in paragraphs one to four inclusive, and in each of them, occurred, if at all, as the court well knew more than three years before the commencement of this action, and that any complaint with relation thereto is barred because of laches on the part of the court or judges assumed or alleged to have been affected thereby.

4. That the delay in the presentation of — this action has been so

unreasonable that this respondent should not be called upon to answer them."

"SAMUEL GOMPERS."

On October 12, 1911, he filed a written motion as follows, and upon this motion the case is now under submission.

Now comes Samuel Gompers, respondent, by Ralston, Siddons, and Richardson, and Alton B. Parker, his attorneys, and moves the Court to dismiss the information and charges filed against him, and for cause says:—

1. There has been no proper replication filed to the plea of the statute of limitations presented by him, it appearing upon the face of the said information and charges that many of the actions complained of therein, occurred more than three years before the filing of said information and charges.

2. No pleading has been filed herein offering any justification or excuse for the laches in bringing this proceeding on the part of the Court assumed or alleged to have been treated with contempt by the actions with which respondent is charged, in the aforesaid information and charges, as set forth in this respondent's answer filed herein.

3. No pleading of any kind has been filed to account for the unreasonable delay in the institution of these proceedings, as alleged in this respondent's answer filed herein."

"SAMUEL GOMPERS."

The paragraphs of the motion will be examined in detail. The first brings forth a single question: whether the charges are barred by the statute of limitations. Counsel for the defendant advances the theory that contempt of Court is a "crime;" therefore to be prosecuted according to the procedure appropriate for the prosecution of crimes, and subject, moreover, to the time limitation which the statute fixes for the prosecution of crimes. The statute of limitations for the prosecution of crimes is Section 1044 of the Revised Statutes of the United States, as follows:

SECTION 1044. (* * * No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section one thousand and forty-six, unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed. But this act shall not have effect to authorize the prosecution, trial or punishment for any offense, barred by the provisions of existing laws.")

Mere casual inspection of the charges shows that specifications #10, 11, 12, 13, 14, 15 and 16, by a definite naming of dates, each refers to an alleged contempt committed within three years antedating the filing of the charges; therefore, as to these seven specifications the statute could have no application even were it conceded to apply to contempts.

While this consideration alone shows the respondent's motion to be meritless, the nature of the other specifications, is that momentous, their character so serious and grave, seeming as they do to involve, if true, a declared unfriendliness to social order, a plain and

purposed repudiation of the tribunals of the people, a defiance of the supremacy of the law of the land and an open determination to be done with law for certain cases, that the court must regard its duty as requiring it to examine and announce whether inquiry into these charges is prohibited by the statute of limitations and the court powerless to attend thereto; otherwise that inquiry be had, the truth declared and justly dealt with.

Let then the question of the Statute be taken up. Counsel write in their brief, "Contempt is made criminal by Section 725 of the Revised Statutes of the United States, reading as follows:—

"The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: Provided, That

such power to punish contempts shall not be construed to

extend to any cases except the misbehaviour of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehaviour of any of the officers of said courts in their official transactions, and the disobedience of resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts."

"While this language does not in any express terms state that contempt is a crime, yet the same situation exists with regard to many other offenses which are declared to be criminal, that is to say, the measure of their punishment is fixed by statute without the thing itself being called expressly a misdemeanor or felony."

The contention is therefore resolved into the narrow question, whether section 725 makes the wilful violation of an injunction, a "crime," to be dealt with only by the public prosecutor through the machinery of the Criminal Courts, under the time limitation which the statute of limitation fixes for the prosecution of crimes.

Let us examine whether by the enactment of Section 725, Congress brought into existence a criminal offense against the United States, not known as such before. In opening this question, it seems of some significance, to notice that.

In the appropriation act, approved June 4, 1897 (31 St. 58) was enacted:—"That the President with the advice and consent of the Senate, shall appoint three commissioners whose duty it shall be,

under the direction of the Attorney General, to revise and codify the criminal and penal laws of the United States."

The result of the labors of this commission is found in the adoption by Congress, on March 4, 1909, of an Act, entitled "An Act to codify, revise and amend the penal laws of the United States." The preamble is thus:

"Be it enacted by the Senate and House of Representatives of the United States of America, In Congress assembled: That the penal laws of the United States be, and they hereby are, codified, revised, and amended, with title, chapters, head-notes, and sections, entitled, numbered, and to read as follows:"

This penal code embraces fifteen chapters, numbered and entitled as follows:

Chapter One.

Offenses against the existence of the Government.

Chapter Two.

Offenses against neutrality.

Chapter Three.

Offenses against the elective franchise and civil rights of citizens.

Chapter Four.

Offenses against the operations of the Government.

Chapter Five.

Offenses relating to official duties.

Chapter Six.

Offenses against public justice.

Chapter Seven.

Offenses against the currency, coinage, etc.

Chapter Eight.

Offenses against the postal service.

85

Chapter Nine.

Offenses against foreign and interstate commerce.

Chapter Ten.

The slave trade and peonage.

Chapter Eleven.

Offenses within the admiralty and maritime and the territorial jurisdiction of the United States.

Chapter Twelve.

Piracy and other offenses upon the seas.

Chapter Thirteen.

Certain offenses in the territories.

Chapter Fourteen.

General and special provisions.

Chapter Fifteen.

Repealing provisions.

Chapter #6, entitled, "Offenses Against Public Justice," embraces Sections 125-146, inclusive: the chapter heading entitles them thus:

SECTION:

125. Perjury.
126. Subornation of perjury.
127. Stealing or altering processes; procuring false bail, etc.
128. Destroying, etc. public records.
129. Destroying records by officer in charge.
130. Forging signature of judge, etc.
131. Bribery of a judge or judicial officer.
132. Judge or judicial officer accepting a bribe.
- 86 133. Juror, referee, master, etc., or judicial officer, etc., accepting a bribe.
134. Witness accepting a bribe.
135. Intimidation or corruption of witness, or grand or petit juror, or officer.
136. Conspiring to intimidate party, witness, or juror.
137. Attempting to influence juror.
138. Allowing prisoner to escape.
139. Application of preceding section.
140. Obstructing process or assaulting an officer.
141. Rescuing, etc., prisoner; concealing, etc., person for whom warrant has issued.
142. Rescue at execution.
143. Rescue of body of executed offender.
144. Rescue of prisoner.
145. Extortion by informer.
146. Misprision of felony.

Nowhere within this Chapter #6, nor anywhere else in the whole Penal Code, is found any reference, direct or indirect to Section 725, nor are the contempts of court recognized by that section, classified as crimes. Section 725 was upon the statute book at the time of the adoption of the penal code, remaining since. In the revision of 1878 it had been placed under "Title Thirteen, The Judiciary;" in Chapter #12, of that title, which chapter was headed "Provisions common to more than one Court or Judge," not under the head of "Crimes." That same revision of 1878, classified "Crimes" under a title distinct, thus: "Title Seventy—Crimes—" which considerations seem to show that Congress itself nowise regards Section 725 as defining a "crime," against the United States.

Putting by that aspect of the question, and taking up another, the nature of criminal offenses against the United States is to be examined for the purpose of distinguishing these offenses from criminal offenses against the several States.

At the time of the Declaration of Independence and of the American Revolution, the common law of England inhered in the soil of the Thirteen Original Colonies; it was the law of the Thirteen Original States, and continues to be their law, except as changed or modified by their own legislative enactments. What in the English law were then common law crimes were, as well, common law crimes against the sovereignty of the several original states;

for the common law was the law of those several sovereignties before the United States came to exist as a sovereignty; this came to pass only by virtue of the Constitution. That sovereignty of the United States, existing only by virtue of the Constitution, depends upon the Constitution for the right to exercise legislative power; having, at its birth no laws save the Constitution and possessing no laws of its own, save such as have been affirmatively enacted by Congress in the exercise of the legislative power conferred upon the Government of the United States by the Constitution.

Unless Congress had by law affirmatively defined criminal offenses against the United States, there could be none against that sovereignty for no common law crimes, are, as such, offenses against it.

“There are no common law offenses against the United States.

It is necessary that a sufficient statutory authority should exist for declaring any act or omission a criminal offense; * * * (U. S. vs. Eaton, 144th U. S. 678.)

Mindful of this consideration, let the power of Courts, in respect to contempt, be looked over in order to know its scope, at the time of the original enactment of Section 725. So that it may be considered whether at that time, and according to the then situation of courts and their powers, Congress by the enactment of Section 725 brought to existence, something new, a “crime” theretofore unknown to Federal Law, or whether it undertook rather, to abridge an existing power, at the moment, already possessed by courts, inherent in their very existence as such.

There is then advanced the need to recognizing that by the enactment of Section 725, Congress did not bring into existence a criminal offense. It declared the existing power of the courts to deal with contempts of their authority; vested in courts no power which was new; broadened no power which courts, as such, and inherently possessed. Instead of broadening, it curtailed and limited that existing power by the proviso—“That such power to punish contempt shall not be construed to extend to, etc.”

The section brought to the law nothing which was new save a limitation upon an existing power of courts.

It will now be undertaken to compare the procedure which has been authoritatively adjudged appropriate for cases of contempt, with the procedure which, under the Constitution and laws of the United States is required in the prosecution of crime. From this comparison, will appear as well as from the consideration heretofore set out, that contempt of court, as such, is not a “crime.”

The Constitution, in Sec. 2, Art. 3, provides, among other things, that the trial of all crimes, except in cases of impeachment, shall be by jury. If, then, Section 725 makes contempt of court a crime, the trial must be by jury, and conversely, if an alleged contemnor is not entitled to a trial by jury, it is because contempt of Court is not a crime.

In the case of *Ellenbecker vs. Plymouth County*, 134 U. S. 31,

a judgment of a State Court of Iowa imposed a fine of \$500 and costs, on each of six plaintiffs in error, and imprisonment in the jail for a period of three months. This sentence was pronounced by the court, as a punishment for contempt, for refusing to obey a writ of injunction issued by the court; and was imposed upon a hearing by the court, without a jury, and upon evidence in the form of affidavits. The case came to the Supreme Court of the United States, upon a writ of error from the Supreme Court of the State of Iowa. The assignment of error, upon which the case was determined by the Supreme Court of the United States, was that the Supreme Court of Iowa disregarded the provisions of Section 1, of Art. 14, of the amendments to the Constitution of the United States, in holding that the contemnors were not entitled to a trial by jury.

The clause of the 14th Amendment, which was in question, is this:

90 “* * * Nor shall any State deprive any person of life, liberty, or property without due process of law.”

On page 36, Mr. Justice Miller states the question thus:

91 “The contention of these parties is, that they were entitled to a trial by jury, on the question as to whether they were guilty or not guilty of the contempt charged upon them; and because they did not have this trial by jury, they say that they were deprived of their liberty without due process of law, within the meaning of the 14th Amendment to the Constitution of the United States.”

He then proceeded to say:

“If it has ever been understood that proceedings, according to the common law, for contempt of Court, have been subject to the right of a trial by jury, we have been unable to find any instance of it. It has always been one of the attributes, one of the powers necessarily incident to a court of justice, that it should have this power of vindicating its dignity, of enforcing its orders, of protecting itself from insult, without the necessity of calling upon a jury to assist it in the exercise of this power.”

Having proceeded through a review of the authorities and quoting at length Section 725, Justice Miller continues on page 38:

“It will thus be seen, that even in the Act of Congress, intended to limit the power of the courts to punish contempts of its authority by summary proceedings, there is expressly left the power to punish, in this summary manner, the disobedience of any party of any lawful writ, order, process, rule, decree, or command of said Court. This statute was only designed for the government of the courts of the United States.

The opinion of this court, in the cases that we have already referred to, shows conclusively what was the nature and extent of the power inherent in the courts of the state, by virtue of their organization; and the punishment that they were intended to inflict, was ample and summary, and did not require the interposition of a jury to find the facts or assess the punishment.

92 This, then, is due process of law in regard to contempt of court, was due process of law at the time of the 14th Amendment's adoption

to the Federal Constitution; and nothing has ever been changed since in regard to it. Except such statutes as Congress may have enacted for the courts of the United States, and as each State may have enacted for the government of its own courts. * * * The counsel for the plaintiffs in error seeks to evade the force of this reasoning, by the proposition that the entire statute, under which this injunction was issued, is in the nature of a criminal proceeding, and that the contempt of court, of which these parties have been found guilty, is a crime, for the punishment of which they have the right of a trial by jury.

We cannot accede to this view of this subject, whether an attachment for contempt of court, and the judgment of the court in punishing the party for such contempt, is, in itself, essentially a criminal proceeding, or not, we do not find it necessary to decide. We simply hold that whatever its nature may be, it is an offense against the court, against the administration of justice, for which the courts have always had the right to punish the party, by summary proceeding, and without trial by jury; and that in that sense it is due process of law, within the meaning of the 14th Amendment of the Constitution."

93 In the case of *Debs*, 124 U. S., 564, the petitioners were found guilty of contempt, and sentenced to imprisonment for terms varying from three to six months, by the Circuit Court of the United States for the Northern District of Illinois, for the violation of an order of injunction. Having been committed to jail, they applied to the Supreme Court for a habeas corpus. It was contended by them that their right to a trial by jury had been infringed upon and denied.

The Court, speaking through Mr. Justice Brewer, upon page 594, said:

"* * * Nor is there in this any invasion of the constitutional right of trial by jury. We fully agree with counsel that 'it matters not what form the attempt to deny constitutional right may take. It is vain and ineffectual, and must be so declared by the courts,' and we reaffirm the declaration made for the court by Mr. Justice Bradley in *Boyd vs. United States*, 116 U. S., 616, 635, that 'it is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*.' But the power of a court to make such an order carries with it the equal power to punish for disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court. And this is no technical rule. In order that a court may compel obedience to its orders, it must have the right to inquire whether there has been any disobedience thereof. To submit

94 the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency.

In the case of *Yates*, 4 Johns, 314, 369, Chancellor Kent, then the Chief Justice of the Supreme Court of the State of New York, said:—"In the case of *The Earl of Shaftesbury*, 2 St. Trials, 615; S. C. 1 Mod. 144, who was imprisoned by the House of Lords for 'high

contempts committed against it' and brought into the King's Bench, the court held that they had no authority to judge of the contempt, and remanded the prisoner. The court, in that case, seems to have laid down a principle from which they have never departed, and which is essential to the due administration of justice. The principle that every court, at least of the superior kind, in which great confidence is placed, must be the sole judge, in the last resort, of contempts arising therein, is more emphatically enforced in the two subsequent cases of the 'Queen vs. Paty and others,' and of the 'King vs. Crosby.' And again, on page 371, "Mr. Justice Blackstone pursued the same train of observation, and declared that all courts, by which he meant to include the two houses of Parliament, and the courts of Westminster Hall, could have no control in matters of contempt. That the sole adjudication of contempts, and the punishments thereof, belonged exclusively, and without interfering, to each respective court." In *Watson vs. Williams*, 36 Mississippi, 301, 341, it was said: "The power to fine and imprison for contempt, from the earliest history of jurisprudence, has been

95 regarded as a necessary incident and attribute of a court, without which it could no more exist than without a judge. It was a power inherent in all courts of record, and coexisting with them by the wise provisions of the common law. A court without the power effectually to protect itself against the assaults of the lawless, or to enforce its orders, judgments, or decrees against the recusant parties before it, would be a disgrace to the legislation, and a stigma upon the age which invented it.' In *Cartwright's Case*, 114 Mass., 230, 239, we find this language: 'The summary power to commit and punish for contempts tending to obstruct or degrade the administration of justice is inherent in courts of chancery and other superior courts, as essential to the execution of their powers and to the maintenance of their authority, and is part of the law of the land, within the meaning of Magna Charta and the twelfth article of our Declaration of Rights.'

On page 599 the Court summarizes:—

"* * * We have given to this case the most careful and anxious attention, for we realize that it touches closely questions of supreme importance to the people of this country. Summing up our conclusions, we hold * * * that the proceeding by injunction is of a civil character, and may be enforced by proceedings in contempt; that such proceedings are not in execution of the criminal laws of the land; that the penalty for a violation of injunction is no substitute for and no defence to a prosecution for any criminal offenses committed in the course of such violation; that the complaint filed in this case clearly showed an existing

96 obstruction of artificial highways for the passage of interstate commerce and the transmission of the mail—an obstruction not only temporarily existing, but threatening to continue; that under such complaint the Circuit Court had power to issue its process of injunction; that it having been issued and served on those defendants, the Circuit Court had authority to inquire whether its orders had been disobeyed, and when it found that they had

been, then to proceed under Section 725, Revised Statutes, which grants power 'to punish by fine or imprisonment, * * * disobedience, * * * by any party * * * or other person, to any lawful writ, process, order, rule, decree, or command;' and finally, that the Circuit Court, having full jurisdiction in the premises, its finding of the fact of disobedience is not open to review on habeas corpus in this or any other court."

No elaboration of authority could more firmly fix the proposition that an alleged contemnor is not entitled to a trial by jury; and from this comes the deduction that a contempt of court is not a crime, for if it were a crime, the right of trial by jury would have attached, by virtue of the Constitution.

Another, and striking, analogy, will now be considered, which will show, as in the last, that a prosecution for contempt of court is not a criminal prosecution. The 6th Amendment to the Constitution is as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the
97 State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

In *Eilenbecker vs. Plymouth County*, 134th U. S. 34-35, was decided that the limitations of Arts. 5, 6 and 8, of the amendments to the Constitution, were intended exclusively to apply to the powers exercised by the Government of the United States, whether by Congress or whether by the Judiciary, and not as limitations upon the power of the States; now therefore in criminal prosecutions, the right to a jury trial, the right to be informed of the nature and form of the accusation, the right to be confronted with the witnesses against him, which are referred to in the 6th amendment, are limitations which apply to judicial procedure in the courts of the United States. It has been shown that an alleged contemnor has no right to a jury trial; from which it has been deduced that a prosecution for contempt was not a criminal prosecution. It is now to be noticed that an alleged contemnor is not, of right, entitled, in all cases of alleged contempt, to be even informed of the nature and cause of the accusation; and moreover, that he is not in the abstract even entitled to be confronted with witnesses against him; and which consideration, as well, the same deduction must be drawn; to-wit, that prosecutions for contempt are not criminal prosecutions.

98 Here it is:—there are two classes of contempt; those committed within the field of the activity of the court's senses, and therefore known to the court without proof; and those committed beyond the senses of the court, and known to the court only by assertion and proven only by evidence. Never has it been thought necessary, or even appropriate, that the first class of con-

tempt should require a formal accusation, or the taking of evidence, preliminary to rebuke and punishment by the tribunal.

In the report of *Ex Parte, Terry*, 128 U. S., on page #305, appears that Terry was guilty of misbehavior in the presence of the court, while the Judges of the Circuit Court were engaged in the hearing and determination of a cause pending before it; that the court thereupon ordered the Marshal to remove him from the court room; that the petitioner, resisted the enforcement of the order, by beating the Marshal, by assaulting him with a deadly weapon, with the intent to obstruct the administration of justice and the execution of the order. He thereupon left the court room and in his absence the court, without further preliminary or to-do, promptly sentenced him to be confined in jail for a period of six months as a punishment for his contempt. The grounds upon which the petitioner based his application for a *habeas corpus* were three: 1st, that the order was made in his absence; 2nd, that it was made without his having any previous notice of the intention of the court to take any steps in relation to the matter referred to in the order; 3rd, that it was made without giving him any opportunity of being
99 heard in defense of the charges made against him.

These several contentions were resolved against him: the Court on page #313 expressing itself thus:

"We have not overlooked the earnest contention of petitioner's counsel that the Circuit Court, in disregard of the fundamental principles of *Magna Charta*, in the absence of the accused, and without giving him any notice of the accusation against him, or any opportunity to be heard, proceeded to try and pronounce judgment, and to order him to be imprisoned; this, for an alleged offense committed at a time preceding, and separate from, the commencement of his prosecution." We have seen that this is a settled doctrine in the jurisprudence both of England and of this country, never supposed to be in conflict with the liberty of the citizen, that for direct contempts committed in the face of the court, at least one of superior jurisdiction, the offender may, in its discretion, be instantly apprehended and immediately imprisoned, without trial or issue, and without other proof than its actual knowledge of what occurred; and that, according to an unbroken chain of authorities, reaching back to the earliest times, such power, although arbitrary in its nature and liable to abuse, is absolutely essential to the protection of the courts in the discharge of their functions. Without it, judicial tribunals would be at the mercy of the disorderly and violent, who respect neither the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them. To say, in the case of a contempt such as is
100 recited in the order below, that the offender was accused, tried, adjudged to be guilty, and imprisoned, without previous notice of the accusation against him and without an opportunity to be heard, is nothing more than an argument or protest against investing any court, however exalted, or however extensive its jurisdiction, with the power of proceeding summarily without further proof of trial, for direct contempts committed in its presence."

101 which establishes that there is nothing in the generic nature of contempts of court, which, in the abstract, requires, as a preliminary necessary to their punishment, a formal accusation or charge; and by this same Terry case is established as well, that there is nothing in the generic nature of contempts, which, in the abstract, requires the hearing of any witness, or of any evidence whatever; much less that a contemnor shall be confronted with witnesses face to face; for, in the Terry case, a sentence of imprisonment for six months in jail, was pronounced in the entire absence of the contemnor; without any opportunity for him to be heard; without the filing of any accusation; and without the hearing of witnesses or testimony in any form.

Were contempt of court a "crime," the accused would be entitled, both to be informed of the nature and cause of the accusation, and to be confronted with witnesses against him. The Supreme Court of the United States having decided in this very conclusive and positive manner,—that neither a formal accusation, nor the hearing of evidence of witnesses, is in the abstract, necessary to the punishment of contempts, establishes, by analogy, that contempts are not "crimes."

My brethren of the practice will, at the suggestion, recognize that the procedure of the Equity Courts of the United States does not recognize a right in any person concerned before these courts, to bring forward oral evidence; nor will the most exhaustive examination of the cases discover any one in which a Federal Court even inadvertently has so intimated.

The understanding, by the Bar, of the method appropriate
102 for the taking of evidence before these courts, seems to have been so general that instances in which the express question has been raised, are neither frequent nor readily discovered. The question, however, appears to have been made and decided in *Bank of Biddeford vs. Cole*, 90th C. C. A., 54. The Court stated the question thus:

"It now becomes necessary for us to take a definite position with regard to some of the propositions which we then left open, because it is now apparently claimed by the petitioner that the proceeding against her for contempt is not merely criminal in its character, but is governed by the strict rules of ordinary criminal proceedings, even apparently to such an extent that the allegations of the petition that she be incarcerated for disobedience of an order for payment of money, must be supported by new proofs, covering all the issues made thereby, and by witnesses confronting her in accordance with the Sixth Amendment to the Constitution. * * * while also it seems to be conceded on all sides that, before committing for contempt, the court should be satisfied beyond a reasonable doubt of a wilful refusal or a wilful act on the part of the person proceeded against, yet neither the sixth amendment to the Constitution, nor any principle shadowed out by it, has strict application to proceedings of the character before us."

and upon page 55:

103 "There can be no question that, in reference to this topic, we may search the rules on practice in equity with safety.

Equity Rule 90 refers us to the practice of the High Court of Chancery in England for assistance in that direction, and this rule relates to the time when it was first enacted. There is nothing to show that the rules as to evidence in the federal courts on proceedings in equity for punishment for contempt are any more stringent than formerly in England, where an issue of fact when it arose was often tried on affidavits. * * * That in the United States *ex parte* affidavits may thus be used is shown by *Rapalje on Contempts*—126. We may also cite the practice as approved by the experienced Judge Hammond, in the *United States vs. The Anonymous*, 21st Fed. 761, 767, decided in 1884, and by the likewise experienced Judge Green, of the District of New Jersey, as shown in *Mexican Ore Co. vs. Mexican Mining Co.*, 47th Fed. 331, and decided in 1891. Affidavits were also used without disapproval before Mr. Justice Nelson, in *Whipple vs. Hutchinson*, 4th Blatchf., and before Circuit Judge Bond and District Judge Giles, in *Birdsall vs. Hagerstown Company*, 1st Hughes, 59, 63."

In "Shipp's case," the practice was so well understood by the experienced and eminent counsel on both sides, that, without any question at all, they assumed the propriety of the appointment of a commissioner to take the testimony, and agreed upon his indemnity.

The court is quite thoroughly aware that there is to be found in the books no dearth of loose and general expressions to the effect that proceedings for the punishment of contempt are "quasi criminal," "criminal in their nature," "penal" and the like; 104 but nowhere has a court even inadvertently said that contempt of the authority of a Federal Court was a specific "crime."

These loose and general expressions are accurate only when given the limited significance so concisely and far-sightedly expressed by Mr. Justice Brewer, in *Bessette vs. Conkley*, 194 U. S., 326, thus: "A contempt proceeding is *sui generis*. It is criminal in its nature, in that the party is charged with doing something forbidden, and, if found guilty, is punished. Yet it may be resorted to in civil as well as criminal actions, and also independent of any civil or criminal action."

Now let the question be asked: Suppose Congress had, by an Act, distinctly and definitely made contempt of court a "crime against the United States"; what would be the result? Would the fact that a certain act, or certain conduct, had been made criminal, deprive the court of the right to deal with that act, or that conduct, as a contempt, and rebuke it by punishment for contempt, if it amounted to contempt?

The answer must be so plainly in the negative that the Supreme Court of Ohio announced it as a foregone question, without making any argument about it. In *State vs. Johnson*, 77th Ohio State, 461, appears an instance where the state legislature made criminal the doing of what amounted to contempt of court. It was this:

"Section 6907 Ohio Revised Statutes, provided:—

105 "Whoever corruptly * * * endeavors to influence * * * any juror, witness or officer in any court of this State, in the discharge of his duties. * * * shall be fined, nor more than \$100, or imprisonment for not more than twenty days, or both."

Johnson was charged, by indictment, with having written to the three Judges of the State Circuit Court, a letter, with the corrupt purpose of influencing the Judges in their decision of a cause pending before them. There is no room to argue but that such an act is an attempt to obstruct the administration of justice. The Supreme Court of Ohio said:

"That the delivery of the letter to the judge was a contempt of court is wholly immaterial; for the same may be both an indictable offense and contempt of court."

The principle was announced and applied in the case of Savin, Petitioner, 131st U. S. 267. A case wherein Savin was committed to jail for contempt, for endeavoring in and about the court-house, to deter a witness from testifying in behalf of the Government, in a pending cause. Section 5399 of the Revised Statutes of the United States provided:

"Every person who corruptly, or by threats or force, endeavors to influence, intimidate or impede any witness, or officer in any court of the United States in the discharge of his duty, or corruptly, or by threats or force, obstructs or impedes, or endeavors to obstruct or impede the due administration of justice therein, shall be punished by a fine of not more than \$500.00 or by imprisonment of not more than three months, or both."

The contention, and its rejection, appear on p. 275, thus:—
106 "It is contended that the substance of the charge against the appellant is, that he endeavored, by forbidden means to influence or impede a witness in the District Court from testifying in a cause pending therein, and to obstruct or impede the due administration of justice; which offense is as embraced by Section 5399, and it is argued that it is punishable only by indictment. Undoubtedly the offense charged is embraced by that section and is punishable by indictment; but the statute does not make that mode exclusive, if the offense be committed under such circumstances as to bring it within the power of the court under Section 725. When, for instance, the defendant is guilty of misbehavior in its presence, or misbehavior so near to it, as to obstruct the administration of justice."

It is therefore to be concluded that contempt of court is not, as such, a "crime." From the phraseology of section 1044, — is manifest that it applies only to the prosecution of crime, and not to proceedings in contempt.

The words "indictment" and "information," found in the section, are expressions which have, and from the earliest times have had a distinct and definite place in criminal procedure. In *Prynn's Case*, 5th Mod. 459, the question was whether an information lay for a riot. An information had been filed, and objected against.

Lord Holt said: “* * * informations were at common law and so the statutes do suppose.” In this all of the judges agreed.

If, prior to the Fifth Amendment, uncertainty existed as to the nature of the offense appropriate to be prosecuted by information, none continued to remain after the adoption of the instrument providing:

“No person shall be held to answer for a capital or otherwise infamous crime, unless, on presentment or indictment of a grand jury.”

This required a determination of the meaning of the term “infamous crime,” and it was held to signify such as were punishable either by death or by imprisonment in the State prison or penitentiary.

Ex parte Wilson, 114 U. S. 417.

Mackin vs. U. S. 348.

Such offenses are therefor to be answered and tried only upon the accusation of a grand jury; all others may be tried upon information filed, and without the intervention of the grand inquest.

Such is the distinction which the Constitution drew, and such it is that the statute of limitations (Sect. 1044) was drawn to meet.

In the very nature of the case, the section could not apply to proceedings in contempt, for as already pointed out by reference to Kearney's case there is not as an abstract proposition any requisite or even an information in all cases of prosecutions for contempt. An information, as known in criminal procedure, is essentially a written accusation, made upon oath; and while it has sometimes been said that prosecutions for contempt, committed not in *facie curiæ* must be inaugurated by the filing of a written charge verified upon oath, I am no subscriber to that doctrine. It is in every way just and in fair accord with the common understanding of the people, that in such prosecutions for contempt as involve the necessity of taking evidence, (that is, contempt not in *facie curiæ*) there should be a charge, made definite by reduction to some kind of documentary form; for if evidence is to be heard, no man can know what evidence to bring, unless there be a charge. But that it should be sworn to, I in no wise believe. It is no doubt appropriate, at least in indifferent cases moved for by private persons, to require an accusation to be solemnized by oath, before lending it to the court's processes; but how for cases of great public concern; of nature so serious and grave as to raise up in the minds of judges a conviction that inquiry into suspected contempt is in particular cases a judicial duty, to be as such, taken up and discharged, to the end that the supremacy of law be maintained?

In such cases it is well enough that the court should cause to be spread upon its journal, or caused to be formulated in a writing in the nature of a rule, such charging matters as go to make an accusation, and thereupon require the suspected persons to make answer thereto. But shall the tribunal be shackled by the necessity of casting about for some one willing for the making of affidavits? Does the power of the court to proceed hang on the coming forward of volunteers for the making of oaths? A proposition foreign to

well ordered conceptions of the functions of judicial tribunals; distant from considerations of efficiency and propriety; deserving scant place in balanced minds.

To require that in contempt cases an accusation, in addition to being of a formal nature should be sworn to, is to subordinate the power of the courts, to the capricious and fluctuating impulses of those who are neither obliged in the matter nor responsible for its outcome; is to render the judicial power of itself an empty impotence; with the result that in instances of open and public revolt and rebellion against the decrees and judgments of the people's tribunals, where the supremacy of law was flouted and undone by private hands, where the interest being public and that of every lawful man the same, the interest alone of citizenship, not personal nor private, but only that common to all, the need for maintenance of law; where no man knows a reason why he above his fellows shall come out for affidavits and for oaths; where the supremacy of the law as such, is publicly assailed; the law itself shall lie undone, defenseless in supine inaction until instilled with energy and vitalized into activity by the setting of some private pen to paper and the lifting of some private hand.

That the power and the supremacy of law is no such vagary is written in Savin's case, 131, U. S., 277, where the court spoke through the great and experienced Harlan:

"* * * It is true that the mode of proceeding for contempt of court is not the same in every case of such misbehavior. Where the contempt is committed directly under the eye or in view of the court, it may proceed upon its own knowledge of the fact, and punish the offender, without further proof. * * *

In that case of an endeavor to corruptly influence a witness, or which the judge had no personal knowledge, no written accusation was made by any individual at all. The United States District Attorney orally reported the matter to the court; thereupon the court ordered a rule to go, requiring Savin to show cause. All that there was of the nature of a formal accusation appeared in the rule which the court had ordered to issue.

The very point was made by Mr. J. A. Anderson, for the appellant. In showing his contention to the court, he stated his first point, thus (p. 271.):

"* * * No written specifications of the facts, constituting the contempt, were furnished Savin, (but when demanded were denied) so as to give him the opportunity of purging himself of contempt."

His third point, (page 272):

"Even if it were lawful to have a trial and take testimony in this class of cases, yet it could only have been done upon an issue formed upon a specific charge in writing, and an answer denying it; whereas in this case the proceedings were purely oral."

He then proceeded to enlarge his point, by this:

"Even if the court had jurisdiction to summarily punish for the matter, set out in the judgment; yet the judgment is void on account of the departure, by the court, from the Mode of procedure in criminal contempt cases, established by the common law courts,

from time immemorial; the mode always followed in England and in this country, except where a different mode is prescribed by statute.

"This mode was to reduce the charge to writing of some kind, (affidavits, order to show cause, interrogatories), specifically
111 designating and setting out the facts constituting the alleged contempt. Then to serve a copy on the defendant, and giving the opportunity to answer the charge, and then if he fully and explicitly denied the charge, under oath, to dismiss the proceedings and permit the answer not to be contradicted by the testimony of others.

"In this case no writings, specifically setting out the facts, constituting the alleged contempt were ever served upon the defendant; when he called for interrogatories, they were denied him. The whole proceeding was oral, and the judgment based upon the testimony of witnesses contradicting the testimony of the defendant, denying the charge."

This argument found scant approval from the court. Its views were announced upon pages 278 and 279, thus:

"* * * It is, however, contended that the proceedings in the District Court were insufficient to give that court jurisdiction to render judgment. This contention is based mainly upon the refusal of the court to require service of interrogatories upon the appellant, so that, in answering them, he could purge himself of the contempt charged. The Court could have adopted that mode of trying the question of contempt, but it was not bound to do so. It could, in its discretion, adopt such mode of determining that question as it deemed proper, provided due regard was had to the essential rules of contempt.

"This principle is illustrated in *Randall vs. Brigham*, 7th Wallace, 523, 524, which was an action for damages against the judge of a court of general jurisdiction who removed the plaintiff
112 from his office as an attorney at law, on account of malpractice and gross misconduct in office. One of his contentions was that the court never acquired jurisdiction to act in his case, because no formal accusation was made against him, not any statement of the grounds of complaint, nor a formal citation against him to answer them. * * * It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties upon affidavits; and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when taken not for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made, and opportunity afforded him for explanation and defense. The manner in which the proceedings shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation. So, in the present case, if the

appellant was entitled, of right, to purge himself, under oath, of the contempt, that right was not denied to him, for it appears from the proceedings in the District Court, made part of the petition of habeas corpus, not only that he was informed of the nature of the charges against him by the testimony of Flores, taken down by a sworn stenographer at the preliminary examination, but that he was
 113 present at the hearing of the contempt, was represented by counsel, testified under oath in his own behalf."

The court therefore concludes that contempts are not "crimes," and that the statute of limitations for the prosecution of crimes has no application to prosecutions for contempt of court, as such.

In argument and brief, the counsel for the respondent take the position that prosecutions for contempt are so much in the nature of prosecutions for crime, that they can not proceed, except from the filing of a formal information; and they claim, if informations are necessary such proceedings come within the purview of the statute of limitations in its use of the term "information" and they argue that if the rules applicable in criminal proceedings are governable therein, no prosecution for contempt can be had save by information.

In support they quote in their brief thus:

"It has been held that proceedings for contempt under either section (relating to civil or criminal contempts) are in the nature of a prosecution for a crime, and the rules of the court construction applicable in criminal proceedings are governable therein, 1st Herdman vs. State, 54 Neb. 626."

The statement of this quotation was so against the court's conception of the common law, that it could see no room for its accuracy save in the existence of a statute, peculiar to Nebraska, upon the point. In giving this case the weight that it should have as an authority upon the proposition, counsel is invited to recall the language of the court upon page 605 of the case cited, thus:

114 "There are two sections of the civil code which define contempt and provide punishment therefore."

And upon page 612—

"In proceedings under Section 260 of the Code it has been many times determined by this court that the affidavit is jurisdictional and the cases do not appear to make any distinction in that regard, between proceedings under that section and proceedings by information under Section 639 of the Code."

The code of Nebraska, I have not by me; it is not at hand; but in looking back into the cases cited in the opinion, section 260 was found to have been quoted in *Johnson vs. Boutons*, 35 Neb. 901, as follows:

"SECTION 260. An injunction granted by a judge may be enforced as the act of the court. Disobedience of an injunction may be punished as a contempt of the court or by any judge who may have granted it during vacation period. An attachment may be issued by the court or judge, upon being satisfied by an affidavit of the breach of the injunction, against the party guilty of the same.
 * * *

Therefore this authority which was devoted entirely to the con-

straction of a local statute is not of great advantage in jurisdictions where that statute does not exist.

The Court now proceeds to the taking up of the remaining paragraphs of the respondent's motion to dismiss. They are as follows:

"2. No pleading has been filed herein offering any justification or excuse for the laches in bringing this proceeding on the part of the Court assumed or alleged to have been treated with contempt by the actions with which respondent is charged, in the aforesaid information and charges, as set forth in this respondent's answer filed herein.

"3. No pleading of any kind has been filed to account for the unreasonable delay in this institution of these proceedings, as alleged in this respondent's answer filed herein."

Nor does the Court say that these paragraphs are not of an affrontive and insolent nature which would justify and perhaps ought to require the striking of them from the files of the court.

For an alleged contemnor to demand of a judicial tribunal, "Justification or excuse for the laches," in not sooner calling him to account is novel, at least. However the Court is disposed to look at the meaning of the expression, "laches" with a view of un-

covering what might be suspected to be a lack of sincerity with the Court.

In 1st *Pomperoy's Equity Jurisprudence*, Section 363, is stated: "Those principles which are so fundamental and essential that they may with propriety be termed the 'Maxims of Equity,' are the following: Equity regards that as done which ought to be done; equity looks to the intent, rather than to the form; he who seeks equity must do equity; he who comes into equity must come with clean hands; equality is equity; where there are equal equities, the first in time shall prevail, where there is equal equity, the law must prevail; equity aids the vigilant; not those who slumber on their rights, or *Vigilantibus non dormientibus, aequitas subvenit*; equity imputes an intention to fulfill an obligation; equity will not suffer a wrong without a remedy; and equity follows the law."

The principle of the maxims, the author, in Section 418, says:

"The principle embodied in this maxim, the original form of which is, *Vigilantibus non dormientibus, aequitas subvenit*, operates throughout the entire remedial portion of equity jurisprudence, but rather as furnishing a most important rule controlling and re-training the courts in the administration of all kinds of reliefs, than as being the source of any particular and distinctive doctrines of the jurisprudence. Indeed, in some of its applications it may be properly regarded as a special form of the yet more general principle,

"He who seeks equity must do equity." The principle thus used as a practical rule controlling and restricting the award of reliefs is designed to promote diligence on the part of suitors, to discourage laches by making it a bar to relief, and to prevent the enforcement of stale demands of all kinds, wholly independent of any *a* statutory periods of limitation. It is invoked for this purpose in suits for injunction, suits to obtain remedy against fraud, and in all classes of cases, except perhaps those brought to enforce a trust against an express trustee."

In Section 419:

"The scope and effect of the general principle as a rule for the administration of reliefs irrespective of any statutory limitation, was stated by an eminent English chancellor in the following language:

"A court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept upon his rights, and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence."

In *McQuiddy vs. Ware*, 20th Wallace, pg. 19, was said:

"Moreover, there has been an utter lack of personal diligence, which is required in such a case as this in order to bring into activity the powers of a court of equity. Equity always refuses to interfere where there has been gross laches in the prosecution of rights. There is no artificial rule on such a subject, but each case as it arises must be determined by its own particular circumstances."

118 In *Bowman vs. Wheaton*, 1st Howard, pg. 193:—

"The complainants are invoking the aid of a court of equity; if they have perfect rights, proper for the cognizance of a different forum, they can have no standing here; if, on the contrary, they require the interposition of this court, they must stand or fall upon the settled principles, which govern its action. The frequency and explicitness with which those principles have been announced by this and other tribunals, would seem to dispense with any necessity for their repetition, and to impart somewhat the appearance of triteness to their recapitulation. They seem to have been by Lord Camden, with a succinctness, and at the same time with a comprehensiveness, compressing within a few sentences almost a system of equity jurisprudence, when he declared in *Smith vs. Clay*, 3rd Brown's Chancery Reports, in note:

"* * * that a court of equity, which never is active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept upon his rights for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence. Where these are wanting, the court is passive and does nothing; laches and neglect are always discountenanced, and, therefore, from the beginning of this jurisdiction, there was always a limitation of suit in this court."

In *Lansdale vs. Smith*, 103 U. S. 392:—

119 "It has been a recognized doctrine of courts in equity, from the very beginning of their jurisdiction, to withhold relief from those who have delayed for an unreasonable length of time in asserting their claims * * *"

In *Martin vs. Gray*, 112 U. S. 239:—

"Now, it is a rule of equity, that an unreasonable delay in asserting rights is a bar to relief * * *"

In *Gallihier vs. Gadwell*, 115 U. S. 373:—

"* * * But it is unnecessary to multiply cases. They all proceed upon the theory that laches is not like limitations, a mere matter of time; but principally a question of the inequity of permitting

the claim to be enforced—an inequity founded upon some change in conditions or relations of the property or parties.”

In *Willard vs. Wood*, 161 U. S. 524:—

“* * * But the recognized doctrine of courts of equity to withhold relief from those who have delayed the assertion of their claims for an unreasonable length of time may be applied in the discretion of the court, even though the laches are not pleaded or the bill demurred to.”

This would seem to show, even to the layman, that the doctrine of laches, is one applied between parties, suitors or defendants before a court. Originally applied only in courts of equity, in instances where the delay in asserting equitable rights had been so great as to justify the adversary in believing them to have
120 been abandoned, and in changing his status in reliance upon that belief. While the doctrine of laches was originally confined in its application to courts of equity, yet it is now applied by courts between parties litigant in some actions at law; notably those of mandamus and quo warranto, actions in which the relief sought, even in the law courts is somewhat dependent upon the judicial discretion of the court, and therefore only granted according to conscience and the broad principles of justice, rather than according to the technical lines of the strict law.

However, be it court of equity or court of law, the doctrine of laches is for application only between suitors before the court in their efforts to call the power of the court into activity in their behalf. In a proceeding for contempt, neither the court nor its judges are suitors before it; neither the court nor its judges are parties adverse to the respondent, neither the court nor judge is contesting for, but administering, the justice of the land.

On the fallacy that alleged contemnors are contesting with judges, contemnors can not too soon unload their mind; for if charges of contempt are true, the contest is against the supremacy of law. The duty and concern of judges is only this: that for and in the name of the people the supremacy of law shall be maintained.

So was it said in *Shipp's Case*, 203 U. S. 574:

“* * * The court is not a party. There is nothing which affects the judges in their own person. Their concern is only that the law should be obeyed and enforced, and their interest is no other than that they represent it in every case. * * *”

121 Having in mind these sound considerations, as well as that the respondent was under conviction and sentence for contempt of court, for violation of the same injunction, which conviction was reversed by the Supreme Court of the United States upon considering also, that as soon thereafter as the court was able to secure and attend with care to the opinion, it inaugurated these proceedings by the appointment of its committee.

The statements of paragraphs No. 2 and No. 3 of the respondent's motion ought to be put aside. The statements of paragraphs 2 and 3 of the respondent's motion seem, at best, to be frivolous and insincere, involving no more than a mere protest against administering, to the affairs and person of the respondent, the established law of the land.

There being no phrase of merit, in the motion, it must be overruled.

There came along also, a written motion by the committee for the appointment of an examiner to take testimony in the case, and that in the hearing, the counsel for the respondent moved orally, that the testimony be heard in open court. To this the committee readily assented, and the court was inclined to view with favor that kind of a plan, at least so far as it could be adopted, without resulting in the exclusion of evidence, material to the question involved. It is questioned whether the process of the court runs into other states, and to the places of residence of those who are expected to give their testimony in the case. Were it assured that the process of the court could require the personal presence, before it, in order to give their testimony, of persons, beyond and distant from the District of Columbia, an order, generally, that the testimony be taken before the court would be well enough.

The court, however, not having that opinion of the law, being unready to declare that its processes could compel the personal attendance here, of such absent witnesses, can see its way clear to no more than this: whatever witnesses are presented by either the committee or the respondent, before the court for oral examination, will be so heard; as to other witnesses, for either, their testimony must be taken according to the established method, and this because the exigencies of the case require it, by depositions before a commissioner or examiner, reported and filed with the clerk of the court.

Counsel for the respondent are given three days in which to agree with the committee, upon the appointment of suitable person to act as a Commissioner to take the testimony.

WRIGHT, *Justice*.

123

Stipulation.

Filed December 9, 1911.

* * * * *

It is hereby agreed by the Solicitors in this proceeding that the same may be referred to Albert Harper, Esq., United States Commissioner, for the purpose of taking evidence therein pursuant to the order of the Court passed in said proceeding on the 23d day of November, 1911, the Solicitor for the Respondent entering into this stipulation without prejudice to the exceptions noted by him to the said order.

J. J. DARLINGTON,
On Behalf of Committee.
 RALSTON, SIDMONS &
 RICHARDSON,
Solicitor for Respondent.

Order.

Filed December 15, 1911.

* * * * *

It is by the court this 15th day of December, 1911, after hearing counsel for the respective parties, ordered that the above proceeding be, and the same hereby is, referred to Albert Harper, Esq., United States Commissioner, for the purpose of taking such testimony as may be adduced before him by the Committee and the respondent,

respectively; that the Committee have thirty days from the date hereof within which to take testimony in chief in support of the charges preferred by it against respondent, that the respondent have thirty days after the conclusion of the testimony on behalf of the Committee within which to take testimony on his behalf in reply, and that the Committee have ten days after the conclusion of the testimony in rebuttal, this order to be without prejudice to the right of either party to take the depositions or the affidavits, as they may be advised, of witnesses residing beyond the District of Columbia, within the time herein limited for taking testimony in the cause, or to apply to the court for leave to examine in open court any witness or witnesses whose testimony either side may desire to have taken in that manner.

To the granting of the above order and to each clause thereof permitting testimony to be taken out of open court or by a Commissioner, by affidavits or in any manner out of the District of Columbia, the respondent by Ralston, Siddons & Richardson, his attorneys in open court and at the time of its granting objects and excepts.

WRIGHT.

125 *Notice of Taking of Testimony.*

Filed December 26, 1911.

* * * * *

Messrs. Ralston & Siddons, Counsel for Respondent.

GENTLEMEN: Please take notice that on Saturday, the 30th day of December, 1911, at 10:30 o'clock A. M., in Equity Court No. 2, we shall proceed to take testimony in open court in support of the charges against the above respondent contained in the Report of the Committee, filed in the above entitled cause.

J. J. DARLINGTON,
JAMES M. BECK,
DAN'L DAVENPORT,
CLARENCE R. WILSON.

Without waiving exceptions service of above accepted Dec. 26, 1911.

RALSTON, SIDDONS &
RICHARDSON,
Att'ys for Respondent.

126

Order.

Filed December 30, 1911.

* * * * *

It is by the Court this 30th day of December, 1911, ordered that Albert Harper, Esq., be, and he hereby is, appointed stenographer to report the testimony of such witnesses in this proceeding as shall be examined in open court, and that the depositions of such other witnesses as may be examined by either of the parties thereto shall be taken before him in his capacity as an Examiner in Chancery of this Court.

WRIGHT, *Justice.*

Objected and excepted to in open court by respondent as far as applicable as to his appointment as Commissioner.

RALSTON, SIDMONS &
RICHARDSON,

*Att'ys for Respondent.**Order Granting Amendment of Charges, etc.*

Filed January 10, 1912.

* * * * *

Upon consideration of the motion of the Committee, filed in the above entitled cause this 10th day of January, 1912, and after
127 argument of the same by the counsel for the respective parties, it is by the court ordered that the said motion be, and the same hereby is granted, and that the Charges therein mentioned be, and they hereby are, amended as in the said motion set forth, with leave to the respondent Samuel Gompers to make such further answer to the said Charges, with respect to the said amendment thereto, as he may desire or elect, within ten days from the date hereof.

WRIGHT

To the making of the above order respondent's counsel in open court objects which objection being overruled he excepts.

Motion to Amend Charges.

Filed January 10, 1912.

Now Come the Committee appointed by the Court's order of May 18, 1911, in the above cause, and, showing to the Court that, by an inadvertence in the Charges against the above respondent filed therein on the 26th day of June, 1911, the editorial in the February, 1908, issue of the American Federationist is erroneously stated

to have been contained in the Printed Proceedings of the Convention of the American Federation of Labor held at Norfolk, Virginia, in the month of November, 1907, move the Court that the said Charges be amended by striking out the allegation that the said editorial was contained in the said Printed Proceedings, and by alleging in lieu thereof that the said Samuel Gompers published in the editorial columns of the February, 1908, issue of the American Federationist, in violation of the injunction granted December 18, 1907, in Equity Cause 27,305 in this Court, the editorial or article set forth in sub-paragraph (b) of Paragraph III of the said Charges against him filed herein on the said 26th day of June, 1911, as aforesaid.

J. J. DARLINGTON,
For Committee.

Messrs. Ralston & Siddons, Counsel for Respondent Samuel Gompers.

GENTLEMEN: Please take notice that on Tuesday, the 9th day of January, 1912, at ten o'clock A. M., or so soon thereafter as counsel can be heard, the foregoing and annexed motion will be presented to the court, sitting as Equity Court No. 2, for its action.

J. J. DARLINGTON,
For Committee.

Copy of foregoing delivered to us this 6th day of January, 1912.
RALSTON, SIDDONS & RICHARDSON, *Att'ys.*

129 *Motion for Signing of Certain Orders.*

Filed March 19, 1912.

* * * * *

Messrs. Daniel Davenport, J. J. Darlington, James M. Beck, and Clarence Wilson, Committee:

You will please take notice that on Monday, March 11, 1912, at the opening of court, or as soon thereafter as the same may be heard, the undersigned will call to the attention of the Court the matters and things hereinafter referred to, relying, in their presentation upon the record of proceedings, a copy of which is in your possession.

RALSTON, SIDDONS & RICHARDSON,
Respondent Gompers' Attorneys.

March 5, 1912.

Service by copy acknowledged March 6, 1912.

J. J. DARLINGTON.

* * * * *

130 Now comes the respondent, Samuel Gompers, and basing this motion upon the proceedings had on the respective days
5—2477a

indicated and other days, moves the Court for the passing nunc pro tune of orders copies of which are hereto attached.

RALSTON, SIDDONSON & RICHARDSON,

Respondent Gompers' Attorneys.

* * * * *

It appearing that upon the hearing of the above entitled cause on Monday, July 17, 1911, respondent's attorneys moved for the dismissal of these proceedings upon the ground that the order of injunction, alleged to have been violated, was not made by Mr. Justice Wright, before whom this proceeding was brought, when he was a member of that branch of the Supreme Court of the District of Columbia, by which the order was made, and was not on said date a member thereof, and that he had no jurisdiction or authority to proceed over this proceeding; furthermore, that at the time this order certifying the cause to Mr. Justice Wright was made, there was nothing pending before the equity court, and nothing to be certified, and that the trial, if at all, should have been had, in the first instance, by that branch of the court against which a contempt was supposed to have been committed, as will more fully appear from said motion filed herein. And it further appearing that

131 said motion was overruled and exception noted, but that no formal order overruling the motion was made and entered at that time, herein, it is this 28th day of June, 1912.

Ordered, that the said motion be and it is hereby overruled as of the date of July 17, 1911, and that this order be entered as of said date.

Whereupon, and as of said date of July 17, 1911, an exception is noted on behalf of respondent.

WRIGHT, *Justice.*

* * * * *

It appearing that on July 17, 1911, the respondent moved to set aside the report herein submitted by Daniel Davenport, J. J. Darlington and James M. Beck, Committee, for the causes expressed in said motion and exhibits attached thereto, as will fully appear from the same, duly filed in this case, and that upon the determination of said motion, the Court overruling the same, to which order so overruling it, an exception was taken by respondent's counsel, but no entry of said order, or of such exception was made by the Clerk, it is this 28th day of June, 1912.

Ordered, That the said motion be and stand overruled as of the date of July 17, 1911, and that this order be entered as of said date.

Whereupon, and as of said date of July 17, 1911, an exception is noted on behalf of respondent.

WRIGHT, *Justice.*

* * * * *

132 It appearing that in the course of the proceedings on July 17, 1911, the following occurred:

"The Court who heard the testimony in the prior proceeding could not doubt that there was reasonable ground to believe that a

contempt of court had been committed, and if this committee had reported adversely, I do not think the court's duty would have permitted it to receive the report. Those considerations are utterly independent of the outcome of this proceeding, because, as I have indicated, the court cannot say in advance what evidence will be produced in the future."

* * * * *

"Mr. RALSTON: If your Honor please, we desire to note an exception to your Honor's order overruling the motion.

"Your Honor a moment ago stated that if these gentlemen had made a different conclusion and had reported that no contempt had been committed, you would not have accepted the report, because your Honor has evidence that it had been committed.

"The COURT: No, I said 'reasonable ground to believe' a contempt had been committed.

"Mr. RALSTON: I understood your Honor to use a stronger expression than that.

"The COURT: That is what I intended.

"Mr. RALSTON: I desire then, with all due respect, in view of the expressions from the bench, to except to being obliged, on behalf of my clients, to submit further motions before your Honor. We submit that for your Honor's judgment.

"The COURT: You submit what?

"Mr. RALSTON: I submit to your Honor's judgment whether under the circumstances we shall be obliged on behalf of the respondents, to proceed further before your Honor.

"The COURT: I do not exactly know what you mean by 'proceeding further.'

"Mr. RALSTON: We are ready to proceed. As we conceive it, your Honor has expressed an opinion which we would certainly at least have great difficulty in overcoming, and in view of that expression of opinion, we submit the question to your Honor as to whether we should further proceed with the next step in this case before your Honor, and whether your Honor should not certify the matter to some other member of the Court.

"The COURT: You may proceed.

"Mr. RALSTON: We note an exception to the direction of his Honor to proceed."

133 But no formal entry of the order of the court, or of the exception thereto was made by the Clerk, it is this — day of —, 1912,

Ordered, as of the date of July 17, 1911, that respondents proceed in this cause before the Justice trying the same.

Whereupon, and as of said date of July 17, 1911, an exception is noted on behalf of respondent.

* * * * *

It appearing that on July 24, 1911, the following occurred:

"The COURT: On Monday, this amongst other things, occurred: (Reading from the transcript.)

"Mr. RALSTON: I desire then, with all due respect, in view of the expressions from the bench, to except to being obliged, on behalf of my clients, to submit further motions before your Honor. We submit that for your Honor's judgment.

"The COURT: You submit what?

"Mr. RALSTON: I submit to your Honor's judgment whether under the circumstances, we shall be obliged on behalf of the respondents, to proceed further before your Honor.

"The COURT: I do not exactly know what you mean by 'proceed further.'

"Mr. RALSTON: We are ready to proceed. As we conceive it, your Honor has expressed an opinion which we would certainly at least have great difficulty in overcoming, and in view of that expression of opinion, we submit the question to your Honor as to whether we should further proceed with the next step in this case before your Honor, and whether your Honor should not certify the matter to some other member of the Court.

"The COURT: You may proceed.

"I have reflected further since then upon the suggestion.

"Whatever might have been the disposition of the presiding justice had there been preferred in orderly manner before the Court a suggestion that another of the Court take up the burden of this proceeding, yet now there is no alternative.

"The attack made before a Committee of Congress by parties defendant permits no course but one.

134 "The respondents have themselves deprived the justice of all alternative save to go forward with the duties of the Court and carry them through to the end.

"I noticed in the report of the reporters several inaccuracies which I have corrected in the copy that the reporter submitted to me. Here is the copy containing the corrections. If there is any question to be made about their correctness, it may be settled presently and not arise later. I submit it to counsel, to examine at their leisure. They need not do it now.

"Mr. RALSTON: In order that there may be no question on the face of the record, if your Honor please, while I think we have noted an exception before, I should like again to note an exception to your Honor's proceeding.

"The COURT: Yes. You may proceed, gentlemen."

But it further appearing that no entry of said order, or of the exception thereto was made at the time by the Clerk, it is this — day of —, 1912.

Ordered, as of date of July 24, 1911, that the respondents proceed in this cause before the Justice trying the same.

Whereupon, and as of said date of July 24, 1911, an exception is noted on behalf of respondent.

* * * * *

It appearing that on July 17, 1911, the respondent, by his attorneys, moved the Court that the names of J. J. Darlington, Daniel Davenport and James M. Beck be struck out of the order theretofore made, requiring them to prosecute the charges of contempt against

this defendant, and that the name of the District Attorney of the United States for the District of Columbia be substituted therefor, because of the fact that the said J. J. Darlington, Daniel Davenport and James M. Beck, by reason of their employment 135 of attorneys for plaintiff in the suit of the Buck's Stove and Range Company, vs. Samuel Gompers, et al. was necessarily biased and prejudiced against this defendant and his co-defendants, and not properly qualified to prosecute the said charges of contempt, all of which will more fully appear from said motion, and that the said motion was, upon consideration, overruled, and an exception thereto noted, and it further appearing that no entry with relation thereto or to said exception was made by the Clerk, it is this 28 day of June, 1912,

Ordered, that the said motion be, and the same is hereby overruled as of the date of July 17, 1911.

Whereupon, and as of said date of July 17, 1911, an exception is noted on behalf of respondent.

WRIGHT, *Justice.*

* * * * *

It appearing that on July 17, 1911, a motion for a bill of particulars was made, which, with supporting affidavits, was filed at that time, and was further heard and passed upon on Monday, July 24, 1911, which motion and the several paragraphs thereof, were overruled and exceptions thereto were duly taken, but that no entries were made by the Clerk, it is this 28 day of June 1912, Ordered, that the said motion for a bill of particulars and the several paragraphs thereof stand overruled as of the date of July 24, 1911.

Whereupon, and as of said date of July 24, 1911, an exception is noted on behalf of respondent.

WRIGHT.

Opinion.

Filed June 24, 1912.

* * * * *

Supreme Court of the District of Columbia.

No. 30180. In Equity.

In re SAMUEL GOMPERS, JOHN MITCHELL, and FRANK MORRISON,
Respondents.

Decided June 24, 1912.

Hearing in Proceedings to Have the Respondents Adjudged Guilty
of Contempt of Court.*Appearances:*

Mr. J. J. Darlington, Mr. Daniel Davenport, and Mr. Clarence R. Wilson, for the committee.

Mr. J. H. Ralston, Mr. F. L. Siddons and Mr. Alton B. Parker for the respondents.

Present: Mr. Justice Wright, Mr. Justice Anderson, Mr. Justice Gould, and Mr. Justice Stafford.

Mr. Justice WRIGHT delivered the opinion of the Court:

The American Federation of Labor, composed of 27,000-30,000 labor unions with a membership of about 2,000,000, of which Samuel Gompers was president, John Mitchell, vice-president, and Frank Morrison, secretary, through its officers, conventions, and members had been conducting against the plaintiff and its customers a destructive boycott. Plaintiff was domiciled in Missouri, the defendants in Washington, D. C.

Mindful that the people had written in the Constitution, "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish," and, "shall extend * * * to controversies between citizens of different states," the plaintiff came hither to the domicile of the defendants, and laid its case before the court of the United States, ordained and established by Congress for the capital of the nation.

The case was one in equity, as follows: For twenty-five years the plaintiff had operated a ten-hour, open-shop stove foundry; never having discharged a man because of membership in a labor union, nor in any way discriminated for or against either class. The men were paid by "piece-work;" the longer they worked, the greater was their pay. Thirty-six out of 745 employes were members of Metal Polishers' Union, No. 13, of St. Louis—others were members of different unions. For years this union, No. 13, had had a contract with the plaintiff for the settlement of all differences by arbitration; it provided: "That pending the adjudication by the President and

Conference Committee, neither party to the dispute shall discontinue operations, but shall proceed with business in the ordinary manner." Plaintiff had faithfully kept to this agreement and under it many grievances had been adjusted.

In violation of this contract, the 36 of the 745 employees struck for a nine-hour day and quit work; they picketed the plaintiff's plant, did what they could by violence, intimidation and otherwise to prevent the filling by others of the places which they had abandoned. This effort failed; and thereupon union No. 13, to which the thirty-six belonged, declared a boycott against the plaintiff; the boycott was endorsed by the Central Trades Labor Union of St.

Louis, by the Metal Polishers' International Union of North America, and by the American Federation of Labor, after discussion in its annual convention and reference to the Executive Council, of which Gompers, Mitchell, and Morrison were active members.

The plaintiff had about 3,000 annual contracts with regular dealers throughout the various States for the purchase of its product, as well as established trade relations with many other customers.

The American Federation of Labor publishes monthly, edited by Samuel Gompers, a magazine of very wide and extensive circulation, which is the official mouthpiece of the organization; each issue under the heading "Official," contained a notice to all unions and members that particular concerns had by the Executive Council been declared "Unfair" and requesting all secretaries of the 27,000-30,000 unions to read the notice to the meetings of their unions, and the labor press and reform press to copy it; such notice was published for the purpose of officially notifying the unions and the public that the concerns named and their business, product, and customers were to be boycotted; and that the whole power of the vast organization was to be used against them to injure and destroy their business as well as that of all persons who dealt with them or handled their product.

In each issue was published an official so-called "We Don't Patronize" list of concerns who in previous issues had been declared "Unfair." The terms "Unfair" and "We don't Patronize" had been evolved out of the extensive experience of the defendants and the organization in conducting boycotts, and were understood to be, and were used as synonyms for the official command to "boycott."

The course thus outlined had been applied to the plaintiff whose name had for a long time been on the "We Don't Patronize" list, and boycotted; the boycott had been directed not merely against the plaintiff but also against its customers, and against whoever dealt with it; against both those with whom it had annual contracts, as well as against whoever had its product for sale. Nor did it cease with those who dealt with the plaintiff directly; extended to the boycotting of the customers of the plaintiff's customers, although they had no relations with the plaintiff.

In order to gain the sympathy of the union men and the public, the defendants in their wide and extensive circulation of boycotting literature, designedly suppressed the truth of the situation and

falsely stated that the plaintiff had been operating as a nine-hour shop and had arbitrarily changed to a ten-hour; and spread broadcast the falsity, that Mr. Van Cleave, its president, had discharged every man belonging to a union. The truth was, that excepting the thirty-six who struck, the plaintiff had continued in its employ all other union men, and paid them large wages for making the very product which union labor was, by the boycott, rendering unsalable.

There existed not the mere negative "letting alone" of the plaintiff and its product, but an affirmative, aggressive, and unlawful concert of attack through threats, menaces, intimidations, offers of violence and coercion upon and against those who were in business relations with it; against whoever undertook to deal with it, and against those who dealt with its patrons.

The boycott had forced customers and the public generally to decline, in self-protection, dealings with the plaintiff; had for the like reason coerced its annual contractors to abandon their contracts and forsake their terms; and had brought about great losses and extensive destruction of its established business and trade relations. The defendants had conspired to destroy its business and to drive it and its product from the market by these unlawful means.

Such, in meager outline, was the case which the plaintiff laid before the court, praying that the defendant conspirators be restrained from continuing the unlawful boycott, and from inciting and advising others (through the publication in their official magazine of its name upon their "We Don't Patronize" list) to join in that boycotting conspiracy.

The defendants (as shown in Justice Gould's opinion) ' already conducted boycotts against no less than 408 concerns, not all of which had submitted without a struggle; and had adopted and declared a definite attitude and policy of hostility to, and defiance of, the judicial power of Government when invoked for the suppression of a boycott by those who appealed to the law of the land for the protection of their rights. There appears to have been adopted a settled policy of misrepresenting the action and the attitude of the courts of the country, and of impugning generally their integrity and the purity of their motives. Whether originally conceived with the design of withdrawing from the judicial tribunals the confidence and support of the people and thereby overthrowing their power, is matter of conjecture; but that such would be the result if the misrepresentations and imputations were generally accepted by the people is no matter of conjecture, but certain.

In his annual report to the convention of the American Federation of Labor of 1905, Gompers, president, said in part:

"In view of the continued use or abuse of the issuance of the writ of injunction in labor disputes there can be no question but that it is our bounden duty to impress upon Congress the necessity of enacting a bill which shall relieve our fellow-workers from the injustice which so many are compelled to endure. * * *

* * * There is no act which is a lawful act that a workman may do from which he should be enjoined from doing by an in-

junction of a court; there is not an act, if it be an unlawful act, which a court by its injunction may enjoin for which there is not already a law with its provided penalty.

"Viewed from any point, the issuance of injunctions, as we have witnessed them in our own country can not be defended in either law or morals. * * *

"* * * The question of the courts' abuse of the injunction powers is in a most unsatisfactory condition, and will not be settled until settled right."

The report of the "Committee on President's Report" adopted by the convention contained:

"Your committee heartily agrees with what the president said in his report and your committee would add thereto: * * * that injunctions always have been a prerogative of sovereignty, delegated at times, used direct at others. * * *

"It has been within the last hundred years limited to the 138 protection of property rights and had nothing to do with the enforcement of personal rights. It was under this construction and limitation that it was adopted into our judicial system. The usual argument in favor of its use in labor disputes is that it is needed to protect the property—business—of the party against whom the strike or boycott is levied, and that the labor organizations, or members thereof, being unable to respond in damages there is no other remedy at law. * * *

"* * * In connection with this your committee desires to call attention to a so-called anti-injunction bill, introduced in the last Congress, the substance of which bill was that no injunction should be issued by any judge until he had heard both sides. The result of such legislation would inevitably be to make him the arbitrator in labor disputes and to confer upon him the power to use the writ of injunction to enforce his decree. Your committee recommends that the American Federation of Labor use all its power to prevent the passage of any such legislation."

The attitude of the order toward the boycott was reflected by its adoption of the report of the "Committee on Boycotts," in part thus:

"We must recognize the fact that a boycott means war, and to successfully carry on a war we must adopt the tactics that history has shown are the most successful in war. The greatest master of war said that 'war was the trade of the barbarian, and the secret of success was to concentrate all your forces upon one point of the enemy, the weakest, if possible.'" In view of these facts, the committee recommends that the State federations and central bodies lay aside minor grievances and concentrate their efforts and energies upon the least number of unfair parties or places in their jurisdiction. One would be preferable. If every available means at the command of the State federations and central bodies were concentrated upon one such, and kept up until successful, the next on the list would be more easily brought to terms, and within a reasonable time none opposed to fair wages, conditions, or hours but

would be brought to see the error of their ways and submit to the inevitable.

"Under the present system our efforts are largely wasted and our ammunition scattered. Let us reduce the boycotts to the lowest possible number and concentrate our efforts upon these, and we feel certain better results will be obtained."

The report of Gompers to the convention of 1906 contains:

"We protest against the issuance of these injunctions, for they have no warrant in law and are the result of judicial usurpation and judicial legislation rather than congressional legislation.

"In all things in which workmen are enjoined by the process of an injunction during labor disputes, if these acts are criminal or unlawful, there is now ample law and remedy covering them.

* * * * * No act is unlawful unless there be a law on the statute books designating and specifying it to be unlawful. * * *

While no Federal statute corrective of judicial excesses in the use of the injunctive process can be reported, yet there can be no doubt that progress has been made toward that desirable consummation. Most of the State courts, and some of the United States courts are now giving more attention to the emphatic protests of organized labor and weighing more carefully the arguments presented by attorneys representing labor, as well as those of publicists, against the disposition to interfere by a resort to this extraordinary process in trade disputes.

"But we must not, as we value our dearest rights and most important interests, relax our efforts because of the check thus given by our educational work.

"While we have caused the judiciary to stay its hand occasionally and to be less ready to usurp legislative functions by the enactment of these special prohibitory decrees, the fact must not be overlooked that the corporations and others who have benefited by abuses of judicial process and opposed us at every step in our efforts to obtain anti-injunction legislation have not been idle, and will not be.

* * * * * Thus men have been enjoined as 'boycotters' from warning the public as to the inferior quality of goods and from asking the public not to purchase goods made by a particular company or firm.

"Another provision of the Pearre bill forbids the mere right to do business being considered as constituting property as a basis for issuing an injunction. Most of the abuses by the courts have arisen from the fallacious idea that the employer's right to pursue his avocation was something more than a personal right, like, for instance, the laborer's right to work for wages."

The report of the "Committee on President's Report" contained:

"We have carefully considered the president's report regarding the issuance of injunction as used in labor disputes; we endorse what he has said, the efforts that have been made and the bill drafted and introduced. We urge upon every trade unionist, friend of free institutions and of human liberty, the earnest and careful considera-

tion of the use now being made of the equity power given to our courts. * * * The theory upon which it is used in labor disputes seems to be that conducting of a business is a property right, that business is property, and that the earning power of property engaged in business is itself property which can and ought to be protected by the equity power in the same way and to the same extent as property, tangible property itself. * * * Your committee believes that there is no tendency so dangerous to personal liberty, so destructive of free institutions and of a republican form of government as the present misuse and extension of the equity power through usurpation by the judiciary. * * *

The report of the "Committee on Boycotts," adopted by the convention, contained:

"The committee finds that not many changes have occurred during the past year and believes that some action must be taken to secure the co-operation of the labor press. * * *

"* * * We can't expect the labor press to give the space it would require to publish the names of all of these firms, and without publicity the intent of the boycott is defeated. We believe that some measure must be adopted to find out if the national, international, or local unions who are responsible for the boycott are doing their duty to bring about the desired results; therefore we recommend that the organizations that have firms on the 'We Don't Patronize' list of the American Federation of Labor, beginning on January 1, 1907, report every three months to the Executive Council of the American Federation of Labor what efforts they are making to render the boycott effective. Failure to report for six months shall be sufficient cause to remove such boycotts as are not reported on from the 'We Don't Patronize' list of the American Federation of Labor."

The report was concurred in.

In the president's report to the convention of 1906, the efficiency of the American Federationist as a disseminator of information was thus indicated.

"It has been a great aid to us in disseminating not only the principles of the cause for which we stand, but the philosophy upon which it is based.

"During the recent campaign it was as expectantly anticipated and eagerly scanned by opponents as by friends. It is seldom but that some of the editorials of the American Federationist are not reproduced, both in the labor press and in the daily press. It is authoritatively quoted, and has a great clientele of readers and students. It should be our purpose to endeavor to extend its already wide circulation."

The convention of 1906 referred to the Executive Council a resolution No. 45, placing the Buck's Stove and Range Company on the "We Don't Patronize" list, with instructions to take action at "the earliest possible moment." This the Executive Council did at its next meeting (March, 1907), forthwith issuing and distributing many thousand circulars as follows:

"Important Notice !"

The Executive Council of the American Federation of Labor, in Session at Washington, D. C., March 18-23, 1907, placed the

Buck's Stove and Range Company of St. Louis, on the

Unfair List,

The publication of this concern will be made in the 'We Don't Patronize' list commencing in the May issue of the American Federationist.

"This firm is commencing to advertize in daily papers all over the country, endeavoring to offset the above action. All members take notice. Appoint committees to visit the dealers and bring it to the attention of all friends of organized labor."

When the suit was begun the defendants determined to disregard and defy the injunction it issued. Reluctant as the court is to so conclude, yet there is no avenue of escape from the conclusion. The chief officers of the American Federation of Labor had, prior to the commencement of the suit of the Buck's Stove and Range Company, determined that they would adhere to their own course, regardless of the courts; and would themselves constitute the tribunal for the interpretation of the Constitution as applied to their affairs, and would themselves decide and determine upon the legality of their conduct in promoting and executing "boycotts," and would proceed to carry out their own purposes and designs regardless of the decrees of the lawful tribunals established by the people for the decision of such questions.

As early as 1903 John Mitchell, vice-president of the American Federation of Labor, published a book entitled "Organized Labor, Its Problems, Purposes, and Ideals," which contained:

"Moreover, when an injunction, whether temporary or permanent, forbids the doing of a thing which is lawful, I believe that it is the duty of all patriotic and law-abiding citizens to resist or at least disregard the injunction."

On December 13, 1906, he said in a speech to the National Civic Federation:

"* * * If a judge were to enjoin me from doing something that I had a legal, a constitutional right and a moral right to do, I should violate the injunction. I shall as an American preserve my liberty and the liberties of the people even against the usurpation of the Federal judiciary."

Who is to decide upon the rights of litigants? The contestant himself, or the court in which the suit stands? Is a personal prerogative to be conceded to Gompers and Mitchell when they happen to be defendants, of deciding their causes for themselves? Shall it belong to every person who is brought before the courts?

That Gompers, president, had brought himself to, and had given

expression to the same revolutionary determination will appear from such of his writings and utterances as are quoted herein. The suit having been begun on August 19, 1907, was first noticed by Gompers, editorially, in the October Federationist, in part thus:

"The bill of complaint alleged that the patronage of the Buck's Stove and Range Co., of St. Louis, has been greatly lessened in many parts of the country and is threatened with ruination, all because the Executive Council of the American Federation of Labor approved the action of the International Brotherhood of Foundry Employees in declaring the product of the Buck's Stove and Range Company unfair, and because that fact was published in the 'We Don't Patronize' list of the American Federationist.

"* * * How much of the \$1,500,000 available for this year's campaign of 'Education' by the Manufacturers' Association is to be utilized in its suit against the Executive Council of the American Federation of Labor we are not certain, but this we do know, that long after the Van Cleave war fund has been exhausted, and the ignorant, hostile National Association of Manufacturers has gone out of existence, labor will give its patronage to its friends and withhold it from its enemies. In other words, labor will utilize every lawful weapon within its power to protect its rights and to advance the cause of justice and humanity.

"So long as the right of free speech and free press obtains, we shall publish the truth in regard to all matters. * * * So long as we do not print anything which is libelous or seditious, we propose to maintain our rights and exercise liberty of speech and the liberty of the press. If for any reason, at any time, the name of the Buck's Stove and Range Company does not appear upon the 'We Don't Patronize' list of the American Federationist (unless the company becomes fair in its dealings toward labor), all will understand that the right of free speech and free press are denied us; but even this will in no way deprive us, or our fellow-workmen and those who sympathize with our cause, from exercising their lawful right and privilege of withholding their patronage from the Van Cleave Co.—The Buck's Stove and Range Company of St. Louis.

"So far as we are personally and officially concerned we have fully stated our position in the American Federationist and elsewhere.

"Do not fail to keep the Buck's Stove and Range Company of St. Louis in mind and remember that it is on the unfair list of organized labor of America."

His hostility to courts, whenever they undertook to interfere with his boycotts, by injunction, appears from the following on the same editorial page:

"Taft, the Injunction Standard Bearer.—He was one of the early injunction judges, and as a statesman and politician he evidently determined to defend his record. Even when he was the judge of an inferior Ohio court, the Superior Court of Cincinnati, he rendered a sweeping decision denying the legality of a perfectly peaceable boycott of what has been called the 'secondary' kind.

"A union had declared a boycott against a certain firm for good, sufficient, and admittedly legal reasons. When the other firms, upon

request, refused to stop dealing with the boycotted employer, the latter in turn were quietly and peacefully boycotted. Judge Taft not only declared that men had no right to institute such 'secondary' boycotts—this is to refuse to give their patronage to firms dealing with their enemies—but he indulged at some length in reflections and dicta which implied that even 'primary' boycotts, no matter how peaceable, are illegal when they are the result of combination and are intended to 'coerce' the persons boycotted. * * * The injunctions against which we protest are flagrantly and without warrant of law issued almost daily in some sections of our country."

Gompers said in a Labor Day speech at the Jamestown Exposition: "An injunction is now being sought from the Supreme Court of the District of Columbia against myself and my colleagues of the Executive Council of the American Federation of Labor. It seeks to enjoin us from doing perfectly lawful acts; to deprive us of our lawful and constitutional rights. So far as I am concerned, let me say that never have I nor ever will I violate a law. I desire it to be clearly understood that when any court undertakes, without warrant of law, to deprive me of my personal rights and my personal liberty, by the injunction process, I shall have no hesitancy in asserting and exercising those rights. And it may not be amiss to sound a word of warning and advice to such of the rampant, vindictive, greedy employers, who seek to rob the working people of our country of their lawful and constitutional rights by unwarranted injunction process.

"The workmen of the United States are citizens, are men. They are intelligent and stand erect, looking their fellow-citizens squarely in the face, asking no immunity or favors, but asserting their equal rights with all other men. They can and will maintain their equality before the law, all the contesting money power to the contrary notwithstanding. The full power of labor has never yet been exercised in defense of its rights. It is not wise to compel its exercise. * * *"

Upon the same editorial page, under a black type heading "Federal Injunctions Jolied—Labor's Contention Justified," he wrote in part:

"But the fact that compromises have been forced upon the injunction-mad judges, usurpers who claim the power to suspend State statutes without even ruling on their constitutionality to restrain State railroad commissions from completing legal functions and duties or from publishing orders or announcing decisions reached after patient inquiries, to treat State legislatures and State courts with contempt and grant injunctions on ex parte testimony of the windiest and most worthless character, to declare penal sections of State laws unreasonable, without regard to the purposes of the laws themselves, just because these sections have 'teeth' and are really effectual—this fact, we say, is cheering, inspiring, and significant.

"The Federal courts have long needed such a lesson. They have been encroaching, meddling, adding to their powers, acting in arrogant, high-handed ways, and assuming to be the whole government. They have not only been enlarging their jurisdiction but changing the character of the weapons entrusted to them.

"Public sentiment in the South would not tolerate such usurpation and evasion, and the judges of the Pritchard type have had to capitulate, with their corporate owners and clients. They have been reminded of the fact that at times the people make the laws for the courts, and that this country is not yet an oligarchy of plutocrats and their judicial servants.

"Injunctions in labor cases are even less defensible than those which provoked the indignation of the South and resulted in the successful protest against judicial invasion and tyranny.

"An equally powerful sentiment, an organized opposition, a vigorous and sustained protest on the part of all organized workers and their justice loving friends can not fail to produce a like result in the sphere that directly concerns labor. The injunction abuse must go and labor must recover its constitutional rights."

In the same issue (October), under a heading "Editorial Notes:"

"So labor must not use its patronage as it will—that is, if Van Cleave of the Buck's Stove and Range Company fame has his way.

* * *

"But what vested right has that company in the patronage of labor or labor's friends? It is their own to withhold or bestow as their interest or fancy may direct.

"They have a lawful right to do as they wish, all the Van Cleave, all the injunctions, all the fool or vicious opponents to the contrary notwithstanding.

"Wonder whether Van Cleave will try for an injunction compelling union men and their friends to buy Buck's Stove and Range Company's unfair product?

"Until a law is passed making it compulsory upon labor men to buy Van Cleave's stoves, we need not buy them, we won't buy them, and we will persuade other fair-minded, sympathetic friends to cooperate with us and leave the blamed things alone.

"Go to — with your injunctions.

"The Buck's Stove and Range Company of St. Louis (of which Mr. Van Cleave is the president) will continue to be regarded and treated as unfair until it comes to an honorable agreement with organized labor. And this, too, whether or not it appears on the 'We Don't Patronize' list.

"In view of the combined attacks of the worst element of the cabalistic class, reinforced by sycophantic judges, and supported by subversive politicians, it behooves the wealth producers to organize more thoroughly than ever, and the organized toilers to be more alert, earnest, and determined to stand for the right and for justice, not only for themselves, but for all."

Eighty-three concerns, amongst them the Buck's Stove and Range Company, were published on the "We Don't Patronize" list 141 in that October issue of the *Federationist*. In the November issue in an editorial, black-typed, "Norfolk Convention," he wrote:

"The recent fierce attacks upon organized labor from such sources as the National Manufacturers' Association and the insidious efforts on the part of corporate power to divert the courts from their proper functions and thus deny labor its rights and proper protection, and, also, approaching political events, serve to bring together our repre-

sentatives in a spirit of earnestness and enthusiasm which promises well for the results of their deliberations."

And under the blacked-typed caption, "Is the Boycott un-American?":

"The cheap and shallow commentators are of course delighted with the Van Cleave suit. The 'un-American' boycott, say they should have been forbidden long ago.

"These gentry can not understand why the fight on it has been so slow in coming. They assume that there is not the slightest doubt that it will be done away with, root and branch, forever and a day.

"But pray how and from whence do these scribes and screechers get their authority for the howl that the boycott is 'un-American' and ergo un-patriotic? * * *

"* * * But to the point, is the boycott, in all that the term implies, un-American?

"All students of American history know that the 'Boston Tea Party' was an American boycott against British merchants and the British Government. * * *

"This set of Editor-educators—heaven save the mark—who invoke the eagle's scream in the effort to down the voice of labor, * * * do not know or perhaps remember that even the Anthracite Coal Commission felt itself constrained to admit the legality and propriety of primary boycotts and ventured to criticize only the secondary ones. Its logic was dreadfully lame as we showed at the time, for if we have the right to boycott 'A,' who is unfair, we have the right to boycott 'B' if he persists in spite of our requests and suasion, in dealing with 'A.' But waiving this consideration for the present, the aforesaid wisecracks of the editorial sanctum have not even the sense to recognize that primary boycotts, no matter by whom, by how many, or for what reason, called and carried on are entirely legal.

"The second set of editors, who are a little more intelligent, we would consider for a moment. This class tried to distinguish between individual boycotts, or boycotts by small groups of persons, and those by strong and powerful unions—locals, central, or national. The latter they profess to regard as illegal and immoral, at any rate, because—because—they hardly know why, presumably because such boycotts are affected, whereas individual boycotts are negligible. * * *

"Still, the courts have a tendency to thoughtlessly follow the unfair employers on the boycott question and stick to the absurd notion that numbers can affect the moral quality of an act or method when each individual in a given number may rightfully do the thing done by the temporary or permanent group.

"There is a third class of objectors. We are told by these that a really peaceable and inoffensive boycott is within the rights of all Americans: That no court would issue an omnibus injunction forbidding all boycotts, without reference to circumstances and methods. * * *

"* * * But, it is said by those who make all these reservations and admissions, the American Federation of Labor and union labor generally have not limited themselves to peaceable, gentlemanly,

moral suasion boycotts. It is charged that not only have they circulated black 'We Don't Patronize' lists instead of white 'We Patronize' ones, but also that they have 'coerced' men into joining boycotts that did not concern them, have resorted to threats, bullying, aggression and tyranny for that purpose. We are, in other words, told that what the injunction suit really aims at is the suppression of brutal, immoral, and lawless methods of forcing boycotts on unwilling persons, the elimination of malice and abuse from the sphere of industry and commerce affected by the boycotts of organized labor."

Under black-typed caption, "Labor and Its Attitude Toward Trusts:"

"Let me illustrate on one point—the abuse of injunctions. In this respect we find the courts creating new dicta, which invariably oppress the wage-worker and encourage the abuse of corporate power.

"The injunction has been changed from its original beneficent intent (to protect rights) and made an instrument of oppression to deprive citizens (when they are wage-earners) of their personal rights and liberties. By its abuse men are restrained from doing perfectly lawful things, and when found in contempt are sentenced to imprisonment without trial by jury. It is an alarming state of affairs when a judge may first lay down his *ex parte* conception (through injunction) of what a citizen may or may not do and then hale the alleged offender before him for judgment and sentence without trial by jury or opportunity for defense. The injunction process, as now employed, aims to deny liberty of the press and the freedom of speech.

"In a case now pending, Mr. Van Cleave, of St. Louis, endeavors to enjoin the American Federationist, the official magazine of the American Federation of Labor, from stating the fact that his employees have found him unfair."

The Executive Council, of whom Gompers, Mitchell and Morrison were members, had been for a week in session at Washington anticipatory of the annual convention of the American Federation of Labor, which occurred in Norfolk from November 11th to November 23d, inclusive. To the annual convention it was the custom for the officers and the Executive Committee to report. Gompers, president, reported as such. Under a black-typed heading "The Injunction Abuse—Labor Seeks Justice, Not Privilege," he decried the courts at some length, painting them as the enemies of workingmen and the deliberate destroyers of their rights, stating in part:

"Injunctions as issued against workmen are never used or issued against any other citizen of our country.

"It is an attempt to deprive citizens of our country when these citizens are workmen, of the right of trial by jury. * * *

"We protest against this discrimination of the courts against the laboring men of our country which deprives them of their constitutional guarantee of equality before the law. * * *

142 "The issuance of injunctions in labor disputes is not based upon law, but is a species of judicial legislation, judicial usurpation in the interest of the money power against workmen innocent of any unlawful or criminal act. * * *

"The injunctions against which we protest are flagrantly and without warrant of law issued almost daily in some section of our country and are violative of the fundamental rights of man."

Under a black-typed heading, "Van Cleave's Suit Against the American Federation of Labor," he discussed at length the suit, misstating the original controversy in St. Louis, concealing that the purpose of the suit was a bona fide effort to restrain an unlawful conspiracy to drive the plaintiff out of business by a coercive boycott of its customers, and, fully appreciating the effect of such an appeal to the sentiments if not to the passions of the people, proclaimed:

"It is a blow aimed at the freedom of speech, the freedom of assemblage, the freedom of thought, and particularly the freedom of the press. * * * The attempt to enjoin or prevent the publication of the 'We Don't Patronize' list of the American Federation of Labor, whether by injunction process or other judicial or legislative means, would be in direct violation of the constitutional guarantee and would indeed abridge free speech and a free press. In all the land there is neither law nor power to enforce such a decree."

The "Committee on President's Report," appointed by Gompers, reported to the convention amongst other things:

"We have carefully considered the president's report regarding the issuance of injunctions as used in labor disputes; we endorse what he has said, the efforts that have been made and the bill drafted and introduced. We urge upon every trade unionist, friend of free institutions, and of human liberty, the earnest and careful consideration of the use now being made of the equity power given to our courts. * * *

"The theory upon which it is used in labor disputes seems to be that the conducting of a business is a property right, that business is property and that the earning power of property engaged in business is itself property which can and ought to be protected by the equity power in the same way and to the same extent as property, tangible property itself. * * *

"Your committee believes that there is no tendency so dangerous to personal liberty, so destructive of free institutions and of a republican form of government as the present misuse and extension of the equity power through usurpation by the judiciary."

Which report was concurred in by the convention.

The report of the Executive Council, signed by Gompers, Mitchell, and Morrison, dealt at length with the suit, in part thus:

"The suit by Mr. Van Cleave of the Buck's Stove and Range Company against our movement is to deprive us of the rights to which we are entitled, the rights of free association, free speech, and the freedom of the press, and with the power which wealth gives to our opponents, the exercise of all that power to antagonize our laudable movement and its purposes, they would invoke the aid of the courts and seek to persuade the perversion of law to render futile the lawful and proper means to protect the working people of our country from tyranny, greed, and injustice."

"The full statement of the case and the principles and results involved in this suit of Mr. Van Cleave of the Buck's Stove and Range

Company are fully covered in the report of President Gompers to the convention. * * * We also recommend that this subject-matter be referred to a special committee to report to this convention at the earliest possible date."

The report then stated that the Council had placed the Buck's Stove and Range Company on the "We Don't Patronize" list.

The report of the treasurer, Lennon, to the same convention contained:

"The Buck's Stove is not calculated to warm the cockles of the heart of any trades unionist—no, nor of any man or woman that stands for a square deal. * * * We propose to keep warm without the use of any Buck's Stove, injunctions to the contrary notwithstanding. * * * Remember that the Lord only helps those who help themselves. Stand for the trade union."

This report the convention adopted.

The convention adopted "Resolution No. 49," of which the resolves were:

"Resolved, That each central body affiliated with the A. F. of L. be and is hereby requested to appoint a committee who shall conduct and manage a 'campaign of education' among the membership affiliated with the central body, as well as dealers in stoves and ranges in their locality and thoroughly inform them of the entire facts of the dispute between the Metal Polishers, Buffers, Platers and Silver Workers' Union of North America, the Brotherhood of Foundry Employees, also as to the attitude of J. W. Van Cleave and the Manufacturers' Association towards organized labor; be it further

"Resolved, That the said committee shall report on the first of each month to the officers of the A. F. of L. of the progress of the 'campaign of education' together with a complete list of all dealers in their locality who are handling and selling the product of the Buck's Stove and Range Company; be it further

"Resolved, That all commissioned organizers of the A. F. of L. shall report on the first of each month to the officers of the A. F. of L. of the progress made in the 'campaign of education' by the different committees of the different central bodies in their respective districts, and also render such aid to all committees as lay in their power."

A "campaign of education" was understood to be the process of "educating" all persons into the realization that they themselves would be boycotted if they in anywise dealt with the plaintiff or its customers. The technique of its operation is shown in the opinion of the court upon the original contempt proceeding (in 35 Wash. Law Rep., 797) offered in evidence by the defendants.

The "Special Committee" recommended in the report of the Executive Council was appointed by Gompers; he selected those whose constituency would best assure the effectiveness of the boycott through the greatness of their respective numbers:

Frank Duffy, representing the United Brotherhood of Carpenters, 192,900 members.

W. D. Mahon, representing the Amalgamated Street Railway Employees' organization, 30,000 members.

143 J. P. Frey, representing the National Moulders' Union, 45,000 members.

D. J. Ramsay, of the Railroad Telegraphers, 15,000 members.

I. Fitzpatrick, of the Horseshoers' Organization, 4,400 members.

I. P. Demsey, representing the United Mine Workers, 254,900 members.

Jere Sullivan, representing the Wholesale Grocers' Employees' International Alliance and Bartenders' International League, 36,000 members.

George Finger, representing Brotherhood of Painters, Decorators and Paperhangers, 62,400 members.

C. J. Carrington, the Seaman's Union, 24,800 members.

John T. Smith, Cigarmakers' International Union, 39,900.

S. L. Landers, Garment Workers, 33,000.

John A. Moffett, President, United Hatters of North America, 8,500 members.

Thos. E. Flood, Teamsters' International Union, 36,600.

The constituency of R. A. Maloney and G. J. Noyes is not shown. That thirteen members of this committee should represent 784,100 union men, hardly fell out by accident.

This "Special Committee" made a supplemental report to the convention:

"Referring to Resolution No. 49 * * * relative to a 'Campaign of Education' we fully agree with the purpose of the resolution, but recommend that the details of manner of carrying out the spirit and object of the resolution be left in the hands of the President and Executive Council."

That the "spirit" and "object" of the resolution was consistently carried out by Gompers as president and Morrison as secretary and both as members of the Executive Council; and that the "spirit and object" was to openly continue the boycott and make it fully effective and destructive in defiance of the injunction, will presently be shown from Gompers' own writings and utterances, published and circulated by Morrison.

All the foregoing transpired even before the application for the preliminary injunction was submitted to the court. That application, in the orderly routine fell to the branch then conducted by Justice Gould, was submitted upon voluminous evidence and full argument by the counsel for the respective parties and taken under advisement by the court. While the application was still under consideration and undetermined, the following, in pursuance of the program of the Norfolk convention just adjourned, was issued and distributed as "Official Matter" to each of the 27,000—30,000 affiliated unions. It was issued six days after the application was submitted and while under consideration by the court.

"Official Statement by the President of the American Federation of Labor Concerning Mr. Van Cleave's Buck's Stove and Range Co.

"Every Labor Union Called upon to Act in this Matter.

"WASHINGTON, D. C., Nov. 26, 1907.

"To All Organized Labor and Friends:

"You undoubtedly are aware of the fact that the interest of the

foundry employees and metal polishers have been greatly injured on account of the hostile action of the Bucks Stove and Range Company, of St. Louis, of which Mr. Van Cleave is president, and he is also president of the National Association of Manufacturers.

"As you are well aware, so inimical to the welfare of labor was the Bucks Stove and Range Company's management that the organization concerned felt obliged to declare the product of that company unfair. The workmen's organization appealed to the American Federation of Labor to indorse its action. After due investigation that indorsement was given and is still further affirmed. The circumstances leading to this action are so widely known that they need not be here recounted.

"Mr. Van Cleave, for the Buck's Stove and Range Company, brought suit against the American Federation of Labor and its Executive Council and has petitioned the court for an injunction to prohibit the American Federation of Labor from in any way advising organized labor and its friends of the fact that the Buck's Stove and Range Company is unfair to its employees and for that reason its name is published upon the American Federation of Labor 'We Don't Patronize' list.

"The court will soon give a decision on the legal issue which has been raised. We shall continue to maintain that we have the right to publish the name of the Buck's Stove and Range Company upon the 'We Don't Patronize' list. Should we be enjoined by the court from doing so, the merits of the case will not be altered nor can the court decision take from any man the right to bestow his patronage where he pleases.

"Mr. Van Cleave, president of the Buck's Stove and Range Company, also president of the National Association of Manufacturers, is raising a war fund of \$1 500,000 to crush organized labor. You already know the attempts that have been made with a part of that money to assassinate the characters of the active men in the labor movement, to corrupt them and to buy them over, much of which was exposed at the recent Norfolk convention of the American Federation of Labor, and more of which will be published in a pamphlet about to be issued.

"Bear in mind that you have a right to decide how your money shall be expended.

"You may or may not buy the products of the Buck's Stove and Range Company.

"There is no law or edict of the court that can compel you to buy a Buck's stove or range.

"You can not be prohibited from informing your friends and sympathizers of the reasons why you exercise this right. You also have the right to inform business men handling the Buck's Stove and Range Company's products of its unfair attitude towards its employees and ask them to give their sympathy and aid in influencing the Buck's Stove and Range Company to deal fairly with its employees, and to come to an honorable agreement with the union primarily at interest.

"It would be well for you as central bodies, local unions and indi-

vidual members of organized labor and sympathizers to call upon business men in your respective localities, urge their sympathetic coöperation and ask them to write to the Buck's Stove and Range Company of St. Louis, urging it to make an honorable adjustment of its relations with organized labor.

144 "Act energetically and at once. Report the result of your effort to the undersigned.

"SAMUEL GOMPERS,

"President, A. F. of L.

"Attest:

FRANK MORRISON, *Secretary*.

"By order of the Executive Council of the American Federation of Labor."

On December 17, 1907 in an elaborate and exhaustive opinion which was read from the bench, Mr. Justice Gould announced the decision of the court, expressing amongst other findings, that in the preceding twelve years the Executive Council had, upon the application of particular unions, approved of and declared boycotts against individuals and concerns in 408 instances. The opinion of the court discussed at length the legal significance of the term "Boycott," examined in detail the nature of "primary" and "secondary" boycotts and the effect that the then current boycott had had in invading and destroying the rights of the plaintiff.

The court found, and stated in its opinion:

"Time and space render it impracticable to even mention all of the instances in which such action has resulted in the loss of customers to the plaintiff. In some instances these customers were under contract with the plaintiff, as in the case of the Strauss-Miller Company, of Cleveland, Ohio, set forth in paragraph No. 19 of the bill, which company abandoned its previous relations with the plaintiff under threat of total loss of patronage of more than sixty thousand persons, members of the United Trades and Labor Councils of Cuyahoga County, Ohio, which is one of the central labor unions of the defendant, the American Federation of Labor.

"Another typical instance is disclosed by the affidavit of Ovid B. Sailors, secretary and treasurer of a firm doing business in South Bend, Indiana, which had been a customer of the plaintiff for several years. He makes oath that on October 3, 1907, he was notified by a committee of No. 330, Metal Polishers' Local Union, of South Bend, Indiana, to discontinue the sale and advertising of plaintiff's stoves and ranges, and that thereafter, on October 18th, his firm was published in the local labor papers by means of a large display advertisement as having been placed on the 'Unfair' list, and that on the following day a circular appeared under the signature of Local Metal Polishers' Union No. 330, stating that 'the outfitting store of Sailors Brothers has been placed on the 'Unfair' list on account of their continuing to handle the Buck's stoves and ranges.
* * * all members and friends of organized labor are asked to read and heed the above.'

"In the case of Alonzo Miller, a customer of the plaintiff at Stanton, Ill., the local union not only threatened to boycott Miller, but voted to fine any miner who bought a range or heater of him which he had purchased from the plaintiff.

"Another witness, who had been a sales manager of the plaintiff for eleven years, swears that he had seen and talked with seventy customers of plaintiff who had been visited by a committee of labor unions of St. Louis and warned not to handle the plaintiff's stoves and ranges under the penalty of being boycotted.

"Another sales manager of the plaintiff's, a resident of Columbus, Ohio, swears that his customers in eight cities in Ohio, five in Wisconsin, and two in Illinois, have informed him that they have been visited and notified that they must not handle the plaintiff's product under the penalty of being boycotted by members of the union in the vicinity of each; that in consequence, plaintiff has lost its customers in eight of such cities which he names; that in the case of the Schunk-Marquardt Company of Toledo, Ohio, in company with George Marquardt of that firm, he called upon Mr. Ramsay, the representative of the unions in that city, and the latter read a letter from the national organization which stated that unless the firm quit handling the plaintiff's stoves and ranges, he (Ramsay) was forced to carry out the order of the national organization, which was to boycott the Schunk-Marquardt's entire business; that in consequence of these threats the plaintiff lost the said firm as a customer."

The opinion defined a boycott thus:

"A combination of many to cause a loss to one person by coercing others against their will, to withdraw from him their beneficial intercourse through threats that, unless these others do so, the many will cause serious loss to them."

And the court observed further:

"The record in this case leaves no doubt that plaintiff has been and still is the object of a 'Boycott,' using that in the most obnoxious sense, viz., an unlawful conspiracy to destroy its business; such a conspiracy as has received the condemnation of every Federal and State court in the country before which it has been brought for criminal action, legal redress, or equitable injunction. * * * Upon the record as presented and for reasons as stated, I am of the opinion that the plaintiff is entitled to be protected by an injunction until further hearing of this case, and I will sign an order restraining the defendants substantially as prayed in the bill."

Thereupon an order of injunction was granted restraining the continuance of the kind of boycott which the court at the time found to exist and restraining as one of the instrumentalities of that boycott, the publication of the plaintiff's name on the "We Don't Patronize" and "Unfair" lists, in the American Federationist. The order required that the plaintiff file in the cause an undertaking with sufficient surety to be approved by the court to make good to the defendants all damage that might be suffered by reason of the injunction, if it should be determined on final hearing that it had been issued against the rights of the defendants.

The order of injunction was entered on December 18th, the un-

dertaking filed on December 23, 1907. As the defendants testify the January, 1907, number of the American Federationist was "hurried up" and issued ahead of time in order that it, still containing the name of the Buck's Stove and Range Company, with eighty-seven others, on the "We Don't Patronize" list might be distributed before the bond was given and the injunction became technically effective. Ten thousand copies were printed on December 20-21. Many of the copies, while put into circulation before the filing of the bond, were not delivered to the consignees until afterward when the injunction had become fully operative. Morrison admits that he personally sent out at least thirty-seven copies after that—the evidence shows that at least 287 additional such copies were distributed.

The issue published the names of the Buck's Stove and Range Company and eighty-seven others upon the "We Don't Patronize" list, and, within, written editorially, Gompers contained:

"Van Cleave's hirelings may spend the \$1,500,000 war fund in the campaign of character assassination, but it will be in vain. The men of labor by their life's devotion to the great cause of labor have earned and possessed the confidence of their fellows. Tell your wives and friends all about Van Cleave's \$1,500,000 war fund and the use to which it is being put."

The same issue contained (large-typed statement):

"The official printed proceedings of the Norfolk convention of the American Federation of Labor are now ready and can be had upon application by mail, 25 cents per single copy, \$20 per 100, postage prepaid by the A. F. of L."

These proceedings contained much about the boycotting of the plaintiff and showed its name on the "We Don't Patronize" list.

By Gompers' writings (in each subsequent issue distributed by Morrison) was industriously and persistently kept before the minds of his readers the controversy with the plaintiff and in a false aspect. The nature of the suit, its object, and the injunction were misrepresented, the attitude of the courts was distorted, their honor and integrity assailed: all with the evident purpose of so presenting them to the people as to inflame the public mind against them; thus to withdraw from them the support of the people, render the judicial power of government forceless and ineffectual and thereby to overthrow the law and impose upon the people and the country his heresies with an unchecked hand. That he wilfully and openly flouted the injunction, not only violating its terms himself but counselling and urging all others to do the same, will be seen from the quotations which follow.

In an editorial in the February number under a large-typed heading, "Free Press and Free Speech Invaded by Injunction Against the A. F. of L.—A Review and Protest," he wrote in part:

"Justice Gould of the Supreme Court of the District of Columbia issued an injunction, on December 18, 1907, against the A. F. of L. and its officers and all persons within the jurisdiction of the court. This injunction enjoins them as officials or as individuals from any reference whatsoever to the Buck's Stove and Range Company's

relations to organized labor, to the fact that the said company is regarded as 'unfair;' that it is on the 'We Don't Patronize' list of the A. F. of L. * * * This injunction is the most sweeping ever issued. (Black type): IT IS AN INVASION OF THE LIBERTY OF THE PRESS AND THE RIGHT OF FREE SPEECH. On account of its invasion of these two fundamental liberties this injunction should be seriously considered by every citizen of our country. * * * With all due respect to the court it is impossible for us to see how we can comply with all the terms of this injunction. We would not be doing our duty to labor and to the public without discussion of this injunction. * * *

"We would be recreant to our duty did we not do all in our power to point out to the people the serious invasion of their liberties which has taken place. That this has been done by a judge-made injunction and not by statute law makes the menace all the greater. * * *

"The publication of the Buck's Stove and Range Company on the 'We Don't Patronize' list of the American Federation of Labor is the exercise of a plain right. To enjoin its publication is to deny and invade the freedom of the press—a right which is guaranteed under our Constitution.

"The right to print which has grown up through the centuries of freedom, has its basis in the fundamental guarantees of human liberty. It has been defended and upheld by the ablest minds. It ought not to be forbidden by a judicial order.

"The matter of attempting to suppress the boycott of the Buck's Stove and Range Company, by injunction, while important, yet pales into insignificance before this invasion and denial of constitutional rights. * * *

"The plaintiff for the Buck's Stove and Range Company, also its president, is no other than Mr. Van Cleave, also president of the National Association of Manufacturers. The recent contemptible attacks of the Manufacturers' Association's hirelings upon the character of the men of labor are still fresh in the public mind. The application for an injunction against the publication as 'unfair' of the Buck's Stove and Range Company by the American Federation of Labor, savored much of an attempt to use the courts in the prosecution of the Manufacturers' Association's avowed union-crushing campaign. * * *

"The injunction is printed in full in this issue of the American Federationist. We hope that our readers will study carefully every word and every phrase. It is a most remarkable injunction.

"Justice Gould seems to base this injunction upon the assumption that there has been a combination of numbers of wage-earners 'conspiring' to commit unlawful acts. Such is not the fact. The public should understand clearly the difference between combinations for unlawful purposes and the voluntary associations of wage-earners for entirely lawful and proper purposes. * * *

"Justice Gould quotes Judge (now Secretary of War) Taft's definition of a boycott as follows: 'A boycott is a combination of many to cause a loss to one person by coercing others, against their

will, to withdraw from him their beneficial business intercourse, through threats that unless these others do so they will cause serious loss to them.' * * *

"No person can be compelled to buy an article. If the purchaser chooses to let alone certain products for a reason or for no reason, there is no way of compelling him to buy.

"This injunction can not compel union men or their friends to buy the Buck's stoves and ranges. For this reason the injunction will fail to bolster up the business of this firm which it claims is so swiftly declining.

"Individuals, as members of organized labor, will still exercise the right to buy or not to buy the Buck's stoves and ranges. It is an amplification of the saying that 'You can lead a horse to water but you can not make him drink,' and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not purchase the Buck's stoves and ranges.

"The publication of the Buck's stoves and ranges on the 'We Don't Patronize' list of the American Federation of Labor is only an incident in the history of the case. These stoves might have been left as severely alone by purchasers if they had never been mentioned on that list. It is not a matter of removing that
146 firm from the list against which we primarily protest, it is this injunction invading the freedom of the press. * * *

"We contend that the power to issue injunctions involving personal rights and liberties should not be left to the discretion of any judge, no matter how wise, how discreet, or how learned."

This editorial was followed by an "Urgent Appeal" for financial aid for defense of "free speech and free press." It bore the names of Samuel Gompers as president, John Mitchell, vice-president, Frank Morrison, secretary, and the other members of the Executive Council; concealing the true nature of the case and of the decision of the court which as above pointed out had found from the evidence, "the record in this case leaves no doubt that the plaintiff has been and still is the object of a 'boycott' using that in the most obnoxious sense, viz: an unlawful conspiracy to destroy its business."

That he knew the nature of the injunction at the time, knew that it was intended to and did restrain a boycott, and not the right of free press and free speech is shown by his report to the 1909 convention of the American Federation of Labor, reprinted in the American Federationist of the December number of that year, and wherein under a heading "The Boycott—Judicial Opinion" appears:

"While the discussion in the past year has tended to relegate to the background such rights as that of the boycott, yet I would be recreant in my duty were I to remain silent upon that subject, and thus perhaps strengthen an impression which has been assiduously given out by our opponents, that the boycott, that is, the right to withdraw patronage, to bestow it upon whom we please has been withdrawn from the workers of our country during the legal proceedings in relation to the injunction secured by the Buck's Stove and Range Company.

"It will be remembered that the injunction was sought primarily

to restrain the people in their right to quit buying Buck's stoves and ranges. It over-reached itself so far that the rights of freedom of speech and press became involved. However, no consideration of the injunction has been possible by the courts without taking up the principle involved in the boycott. * * * Upon the workers and their organizations, however, was made the attempt to have the boycott declared unlawful and a conspiracy, and hence subject to judicial decree and punishment."

The so-called "Urgent Appeal" proceeded to direct attention to the foregoing editorial which preceded it in the same issue in the words:

"In another part of this issue of the American Federationist is published an editorial under the heading: 'Free Press, Free Speech, Invaded by the Injunction Against the American Federation of Labor—A Review and Protest.' The editorial contains a full presentation of labor's position in regard to this injunction."

The "Urgent Appeal" closed with this in large type:

"SECRETARIES WILL PLEASE READ THE ABOVE AT THE MEETING OF THEIR RESPECTIVE ORGANIZATIONS AND URGE PROMPT ACTION. LABOR PRESS WILL PLEASE COPY AND AID."

The "Urgent Appeal" and editorial were printed in circular form and thus distributed together as an "official document" to each of the 27,000-30,000 affiliated unions.

Subsequent to the injunction order of December 18th, an opinion by one of the counsel for the complainant had been published to the effect that, although the power of the Supreme Court of the District of Columbia to punish for contempt was limited to such persons as might at any time be found within the territorial limits of the District, the decree was nevertheless binding upon all persons comprised within its terms, wherever they might reside, and that it was a criminal offense under the statutes of the United States, punishable by imprisonment in the penitentiary for any two or more persons anywhere in the United States to conspire together to evade or defeat the decree by doing any of the acts prohibited by it. Thereupon Gompers published in the February, 1908, issue, upon the page following the "Urgent Appeal," in small type, a copy of the decree of injunction; prefacing it in bold and prominent type; the following is a facsimile:

"American Federationist—Order Granting Injunction.

"In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove and Range Company declares that punishment for violation of the injunction issued by Justice Gould, against the American Federation of Labor, applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation of Labor assure us that this construction of the court's order is accurate.

"The Injunction—Buck's Stove and Range Co. v. American Federation of Labor.

"This cause coming on to be heard upon the petition of the complainant for an injunction pendente lite as prayed in the bill, and the defendant's return to the rule to show cause issued upon the said petition, having been argued by the solicitors for the respective parties, and duly considered, it is, thereupon, by the court, this 18th day of December, A. D. 1907, ordered * * * of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of, or in conjunction with, them or which contains any reference to the complainant, its business or product in connection with the term 'Unfair' or with the 'We Don't Patronize' list, or with any other phrase, word or words of similar import, and from publishing or * * *

This was a deliberate perversion of what had been declared by the counsel for the Buck's Stove and Range Company and was plainly designed by Gompers as an invitation to all persons beyond the territorial limits of the District of Columbia to violate the injunction, and as an assurance that they could do so safely and with impunity. The far-reaching effect which was likely to attend the issuance of a single number of the American Federationist containing a violation of the injunction is illustrated by the result which attended 117 the receipt of the March, 1908, number by a member of Congress. That issue contained an editorial entitled "Labor Organizations Must Not Be Outlawed—The Supreme Court's Decision in the Hatter Case," in which Gompers discussed the case of *Loewe v. Lawler*, 208 U. S., 271. The editorial was separated by a blank line from the following:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even a Loewe hat."

The Congressman procured both the editorial and this disconnected invitation to continue the boycott which the court had enjoined to be reprinted in the Congressional Record for the purpose of readier distribution amongst the public; and under his official frank, sent through the mails as many copies as "he could get." The defendants procured to be printed at the Government Printing Office, 30,000 copies which also were distributed, one to each of the 27,000 unions, through the United States mails; carried without expense to the defendants and delivered under the same Congressman's official frank.

The foregoing three-line notification in the March number was immediately followed on the same page by "To organized Labor and friends," an article by Gompers which contained amongst other things:

"The Supreme Court holds that the action of the hatters, as described in the complaint, is a combination 'in restraint of trade or commerce among the several States' in the same sense in which those words are used in the Sherman law * * * Under this decision the publication of a 'We Don't Patronize' list in the American Federationist, or any other publication, makes the organization and the

individuals composing it liable to monetary damages and imprisonment (see sections 1, 2, and 7 of the Sherman law quoted elsewhere). This being the case I feel obliged to discontinue the 'We Don't Patronize' list. * * *

"I have not words adequate to express the regret I feel at being obliged to take this action, especially as in the opinion of competent lawyers—and their opinion is shared by many laymen as well as myself—this decision of the Supreme Court is unwarranted and unjust, but until Congressional relief can be obtained it must undoubtedly be binding upon us all. Were it only myself who might personally suffer, for conscience sake I would not hesitate to risk every penalty, even unto the extreme, in defense of what I believe to be labor's rights. In this case of the adverse court decision, and, indeed, in every other circumstance which may arise, I think those who know me do not question my loyalty, devotion, and willingness to bear fully any responsibility involved in the forwarding of the cause to which my life is pledged; but unfortunately the terms of the decision are such that no one person, even though president of the American Federation of Labor and willing to assume entire responsibility, will be permitted to take upon himself the sole penalty of protest against what I and every member of every organization affiliated with the American Federation of Labor, and, indeed, every patriotic citizen, must feel to be a most sweeping dragnet decision, making the natural and rational voluntary action of workmen unlawful and punishable by fine and imprisonment.

"Personal willingness to bear the penalty would avail nothing in this instance to spare the other men of labor and our organizations from the penalties decreed to them by the Supreme Court; in fact, such an attempt on my part would involve a vast number of people who would be held equally responsible with me."

In the same number of the *Federationist* he published his report to the Executive Council of January 20, 1908, in which reproduction appeared the following:

"Resolution No. 49.—In conformity with the provisions of this resolution, circular was issued on November 26th to all affiliated organizations in regard to the suit brought by Mr. Van Cleave for the Buck's Stove and Range Company against the American Federation of Labor, its E. C., and others. The E. C. has been kept advised from time to time what steps have been taken in this matter.

"With your consent I have retained Alton B. Parker as senior counsel, to act with Messrs. Ralston and Siddons in the defense of labor's rights in this case. Our position and attitude in this case are fully set forth in an editorial which I have written and which will be published in the February issue of the *American Federationist*, and which I will lay before you before adjournment."

In the April, 1908, issue, he, under the heading "Labor's Protest to Congress," wrote of the decision of the Supreme Court of the United States:

"Labor and the people generally looked askance at the invasion of the court upon the prerogatives of the law-making and executive departments of our Government.

"The workers feel that Congress itself must share our chagrin and

sense of injustice when the courts exhibit an utter disregard for the real intent and purpose of laws enacted to safeguard and protect the workers in the exercise of their normal activities.

"There is something ominous in the ironic manner in which the courts guarantee to workers; the 'right' to be maimed and killed without liability to the employer.

"The 'right' to be discharged for belonging to a union.

"The 'right' to work as many hours as employers please and under any conditions which they may impose.

"Labor is getting indignant at the bestowal or guaranteeing of these worthless and academic 'rights' by the courts, which in the same breath deny and forbid to the workers the practical and necessary protection of laws which define and safeguard their rights and liberties, and the exercise of them individually or in association.

"The most recent perversion of the intent of a law by the judiciary has been the Supreme Court of the United States decision in the *Hatter's* case, by which the Sherman anti-trust law has been made to apply to labor, although it was an accepted fact that Congress did not intend the law to so apply and might have even specifically exempted labor, but for the fear that the Supreme Court might construe such an affirmative provision to be unconstitutional."

In the same issue he printed an "Address to Workers," which contained:

"While the Supreme Court or other institutions may be able to temporarily retard and seriously embarrass the growth and
148 action of our movement we boldly assert that no power on earth can destroy, successfully outlaw or disrupt the trade-union movement."

This bore the signature of himself and that of Morrison. It states further:

"The Supreme Court decision applying the Sherman law to labor makes the crisis an especially grave one, for under that decision every normal, peaceful, and helpful activity of the workers whether exercised individually or in association may be construed as a 'conspiracy' or a combination in restraint of trade or commerce and punishable by a fine or imprisonment or both and damages may be inflicted to the extent of each individual's possessions. * * *

"Hold mass meetings in every city and town in the United States on the evening of the third Sunday or Monday in April, and at that meeting voice fully and unmistakable labor's protest against the Supreme Court decision which strips labor of the rights and liberties which we had supposed were guaranteed by the Constitution.
* * *

"We now call upon the workers of our common country to stand faithfully by our friends, oppose and defeat our enemies, whether they be candidates for President, for Congress, or other offices, whether executive, legislative or judicial."

and further:

"Let labor not falter for one instant: the most grave and momentous crisis ever faced by the wage-workers of our country is now upon us.

"Our industrial rights have been shorn from us and our liberties are threatened. It rests with each of us to make the most earnest, impressive, and law-abiding effort that lays within our power to restore these liberties and safeguard our rights for the future if we are to save the workers and mayhap even the nation itself from threatened disaster.

"This is not a time for idle fear.

"Let every man be up and doing. Action consistent, action persistent, action insistent is the watchword."

It bears the signature of himself and Morrison.

In an editorial in the same issue entitled "Labor's Great Conference," he amongst other things wrote:

"It will be well for the law-makers and the law-dispensers to remember that there is a limit to the patience of the wage-workers. He has too much intelligence and too much strength to be much longer befuddled by vain promises and specious casuistry. * * *

"The recent decision of the Supreme Court was like the letting of the genie out of the bottle in the old legend. Once released, the genie waxed and spread until it became a mighty giant, obscuring the very sky, and, mark you, the genie once loosed refused to return to the seclusion of the bottle. The genie of labor aroused is abroad in the land. It will not return. Its future action depends largely upon Congress.

"Labor has a large measure of patience. It knows itself to be in the right, and to be right is to have all eternity and all the forces of omnipotence with you. Labor halts at this time to respectfully petition Congress for the amendment to the Sherman law which will specifically exempt labor from a law never intended to apply to it. * * *

"We know and we hope all will realize how greatly the recent action of the Supreme Court has aroused the workers. * * *

"This protest conference owes its greatest importance to the fact that it was the most emphatic announcement of the workers to all the people that labor is better qualified than any other force in society to define its own rights and liberties. With all due respect to our courts and to Congress we believe that the workers and their chosen representatives are—from the very fact that they are workers—the proper judges of what labor is entitled to in the way of consideration at the hands of our judicial and law-making powers. * * *

"Let not any force in society imagine for one moment that the workers will allow their unions to be outlawed by judicial decision and deprived of the exercise of their natural, normal, and beneficial activities."

At the end of this article, separated only by a dash, appears:

"The temporary injunction issued by Justice Gould, of the Court of Equity, of the District of Columbia, in the (Van Cleave) Buck's Stove and Range Company of St. Louis against the American Federation of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia."

Separated by another dash appears:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even a Loewe hat."

And then, separated by the dash:

"Labor must and will exercise its every lawful right to protect not only its own interest and welfare, but those of every man, woman, and child of our country."

On the next page, in an article entitled "Press Misrepresentation of Labor's Criticism of Supreme Court Decision," he states:

"For the present the Supreme Court has ruled that peaceful boycotting, as explained above, is illegal," which shows that he knew, and knows its illegality.

In the same issue he reprinted an "Official Circular" issued March 20, 1908, to State branches and central bodies. The subjects of this circular were matters dealt with by the Norfolk convention, isolated, apart, and dis severed from the plaintiff and its suit; utterly foreign and irrelevant to any of its subjects, there was in the circular:

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove and Range Company of St. Louis. Fellow-workers, be true and helpful to yourselves and to each other. Remember that united effort in cause of rights and just must triumph."

It was signed by Gompers as president and Morrison as secretary.

In the May, 1908, issue, he published a letter written by himself to "Mr. Samuel De Nedrey, Chairman Committee, Mass Meeting, Columbia Theatre, Washington, D. C." on April 18, 1908, in which amongst other things he wrote:

"If through judicial usurpation in the matter of injunctions, or through interpretations of laws, the rights and the liberties
149 of the working people can be shorn from them, it is not difficult to discern that the liberty of all our people is on the wane and that the dangers of decadence in our national life as a republic made up of sovereign, free citizens is but a matter of time."

In a June number editorial, "Dangerous Trend of Press Criticism," he wrote:

"If our critics have any regard for the public welfare, they would do well to consider the present industrial situation from a somewhat broader point of view than they usually assume. By their narrow and vindictive attitude they may precipitate the very crisis which they pretend to believe will follow the program adopted by the workers. * * * No subterfuge is neglected to make the unthinking mass of the people believe that the recent Supreme Court decision merely gave labor its just deserts, and that in its protest labor is seeking undue privilege and special exemption before the law. * * * We felt it our duty to call attention to the fact that the workers will not give up their right to organize, and if forced to secret organization, it would probably be much less satisfactory in its results than the present open and public form of trade unions. * * * We have, however, repeated the warning both editorially

and on the public platform at every opportunity. If the press of the country creates further prejudice by its deliberate misrepresentation of our actions and motives, then upon the press be the responsibility for what may happen in the future. * * * We have pointed out editorially how far-reaching is this decision (of the Supreme Court) and our position has not been controverted. It takes away rights more sacred and fundamental than that of bestowing our patronage where we choose—though we do not concede the right of the court to deprive us of that—but the whole idea of the daily press is to lull the people into a false sense of security, while labor is being robbed of its inalienable rights. * * * Not only to the press of this character, but to its masters—to those who control its policy—we would direct a word of warning. It is dangerous to ridicule and deride the honest, peaceful and lawful efforts of the workers to protect their rights and obtain redress for their wrongs. Being human, the workers have many human emotions, many primitive passions, many powers as yet but little exercised. Deliberately convince the masses of the workers that they have no chance of redress or protection either from Congress or the courts, and you invite a disregard for law and dislike for peaceful measures which may be most disastrous in its consequences to the country."

And on the next page wrote:

"The better class of employers, aye, the thinkers in all walks of life, are beginning to concede that the workers are the best judges of what they want."

And in an editorial "The Right to Strike in Jeopardy," which follows:

"Whither are we drifting? Where will the process of judicial legislation, of judicial nullification of individual rights (when the individuals happen to be workmen associated for mutual protection) end in this great democratic Republic? Is the judiciary bound to destroy, if it can, all the freedom labor has won since the time when a mere combination to obtain wages was punishable as a conspiracy? * * * The Supreme Court of the United States, we know, outlawed the peaceable boycott and has taken the logically and ethically impossible position that free and independent citizens may not withhold their patronage, or announce such withholding, from men they regard as enemies, men without any claim whatever to such patronage. By reasoning, which will before long be recognized as archaic, the conclusion has been reached that because certain persons have the right to open and maintain a stove or hat shop and the right to sell stoves or hats without hindrance to all wishing to buy them, therefore A, B, C, or D may not declare publicly that for reasons satisfactory to themselves they will not buy Buck's stoves or Loewe's hats sold by the manufacturers of these articles.

"But the outlawing of the peaceful, rightful, non-invasive boycott is not the 'last word' of American judges."

In the same number he reprinted an address, delivered by him in Chicago on May 1, containing the following:

"I might say just parenthetically about the Hatter's case that you are not now permitted to boycott the Loewe hats, but I want to

call your attention to the fact that there is no law compelling you to wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. This applies equally to Mr. Van Cleave's stoves and ranges, and, by the way, I don't know why you should buy any of that sort of stuff. I won't; but that is a matter to which we can refer more particularly in our organizations."

On page 431 of the July, 1908, issue of the American Federationist appears amongst other things:

"To call an announcement of a legal intention a 'threat' does not change the character of the announcement.

"To call an agreement a 'conspiracy' does not change its character.

"The question always is, have the men who 'threatened' and 'conspired' the right to do that which they 'threaten' and 'conspire' to do?

"How honest courts can overlook these simple and unquestionable propositions passes understanding. It is only the densest ignorance and most amazing mental confusion that can attempt to justify denial of the right to 'threaten' to strike, sympathetically, or otherwise, of the right to 'threaten' to withhold patronage from unfriendly dealers, or of the right to 'conspire' to make and enforce, by legal means, union shop agreements, to secure and maintain industrial peace. * * *

"But it will prevail in time, even with judges.

"Men of labor, be up and doing."

And separately spaced upon the page:

"Insistence and persistence in the cause of right and justice must triumph."

And:

"Every effort should be put forth to organize the yet unorganized and bring them within the beneficent fold of organized, united labor."

And then:

"The Supreme Court of the District of Columbia has made permanent the injunction issued by Justice Gould enjoining the American Federation of Labor, its officers, its affiliated unions and their members and their friends, from declaring that the Van Cleave Buck's Stove and Range Company of St. Louis is on the unfair list of the American Federation of Labor or the publication of that statement in the American Federationist. An appeal will be

150 taken to the Court of Appeals of the District of Columbia, and, if necessary, to the United States Supreme Court. The injunction does not compel anyone to buy the Van Cleave Buck's stoves and ranges, nor has any decree been issued compelling anyone to buy the Loewe hats."

In the August, 1908, issue in an editorial headed: "The Essence of Labor's Contention on Injunctions," amongst other things:

"The writ of injunction was intended to be exercised for the protection of property rights only.

"It must never be used to curtail personal rights,

"Injunctions as issued against workmen are never used or issued against any other citizen of our country.

"It is an attempt to deprive citizens of our country when these citizens are workmen, of the right of trial by jury.

"Injunctions as issued in trade disputes are to make outlaws of men when they are not even charged with doing things in violation of any law of state or nation.

"We protest against the discrimination of the courts against the laboring men of our country which deprives them of their constitutional guarantee of equality before the law.

"The injunctions which the courts issue against labor are supposed by them to be good enough law today, when there exists a dispute between workmen and their employers; but it is not good law—in fact, is not law at all—tomorrow or the next day when no such labor dispute exists.

"The issuance of injunctions in labor disputes is not based upon law, but is a species of judicial legislation, judicial usurpation, in the interests of the money power against workmen innocent of any unlawful or criminal act.

"The doing of the lawful acts enjoined by the courts renders the workman guilty of contempt of court and punishable by fine or imprisonment or both.

"Labor protests against the issuance of injunctions in disputes between workmen and employers, when no such injunctions would be issued when no such dispute exists. Such injunctions have no warrant in law and are the result of judicial usurpation and judicial legislation rather than of congressional legislation. * * *

"We shall exercise our every right and in the meantime concentrate our efforts to secure the relief and the redress to which we are so justly entitled."

And in black type at the bottom of the page repeats:

"We now call upon the workers of our common country to stand faithfully by our friends.

"Oppose and defeat our enemies, whether they be candidates for President, for Congress, or other offices, whether executive, legislative, or judicial."

On the next page under the heading: "Van Cleave Hales Us to Court for Contempt:"

"Well, here it is. An order of the Supreme Court of the District of Columbia to Samuel Gompers, Frank Morrison, and John Mitchell, to show cause why they should not be punished for contempt of court in an alleged violation of the terms of the injunction issued by Justice Gould upon the petition of the Van Cleave Buck's Stove and Range Company of St. Louis. The order is as follows: * * *

And, after quoting it, he proceeds:

"We presume that the Van Cleave Buck's Stove and Range Company of St. Louis has laid before the court the grounds upon which we are alleged to have violated the terms of the injunction; thus far, however, we have not been furnished with the information upon which the order 'to show cause' is based. * * *

"It is quite true that we have editorially discussed both the suit

which the Van Cleave Buck's Stove and Range Company of St. Louis, Mo., brought against the officers of the American Federation of Labor and others and have discussed therein the principles involved in the injunction issued by Justice Gould in connection with the suit.

"What other course would either the Van Cleave Buck's Stove and Range Company of St. Louis or the honorable court have us pursue? Here is a great case pending before the courts involving the fundamental rights of the freedom of speech and the freedom of the press, inviolable rights guaranteed by the constitution of every State in the Union and the Constitution of the United States. If it is to be held that by editorial review of this suit and the injunction we have violated the order of the court, we say first that we are not conscious of so doing, and second, that in discussing this suit and injunction, so have many eminently respectable newspapers and magazines, and we were, therefore, in good company.

"We obeyed the terms of the injunction and removed the Van Cleave Buck's Stove and Range Company of St. Louis from the 'We Don't Patronize' list published in the American Federationist. What else would the court have us do? * * *

"On the rostrum and lecture platform, are we to be estopped from referring to and reviewing a cause involving the fundamental guarantees of the liberty of speech and of the press? * * *

"We can not bring ourselves to believe that the court will hold that we have been in contempt of its order. To so hold would, indeed, be the severest blow to freedom of the press and freedom of speech, and the sooner that the country shall definitely know it the better. * * *

And again, in black type at the bottom of the page (615):

"We now call upon the workers of our common country to stand faithfully by our friends, oppose and defeat our enemies, whether they be candidates for President, for Congress, or other offices, whether executive, legislative, or judicial."

In the advertising section of the September, 1908, issue of the American Federationist, he published not all but a part of the petition of the Buck's Stove and Range Company which charged him, Mitchell, and Morrison with having violated the injunction. The parts of the petition which he selected for publication, and the emphasis which, by printing in large type, he gave to certain clauses clearly discloses that his intention was to bring again before his readers and others that the policy of the American Federation of Labor was to disobey the injunction and to invite, court, and direct disobedience to the particular part. The greater portion of charge eight of the petition was printed in small type, the whole filling

fifty-three lines; the following indicated thirteen words were
151 printed in large type: "In the meantime we should proceed
as we have of old" and whenever a "court" shall issue an injunction restraining any of our fellow-workers from placing a concern hostile to labor's interest on our 'unfair' list; enjoining the workers from issuing notices of this character, the further suggestion is made that upon any letter or circular is used upon a matter of this

character, after stating the name of the unfair firm and the grievance complained of, the words, 'We have been enjoined by the courts from boycotting this concern,' could be added with advantage."

He printed eighteen lines of charge nine, of which the following were in large, prominent, and contrastive type: "That the American Federation of Labor will never abandon the boycott."

In charge fourteen seventy-four lines were in small type save this: "Bear in mind that you have a right to decide how your money shall be expended." * * * "You may or may not buy the products of the Buck's Stove and Range Company." "There is no law or edict of court that can compel you to buy a Buck's stove or range."

Charge eighteen, covering two columns, was reprinted in small type save as follows: "Unlawful Boycott." Then follows:

"Our readers should govern themselves accordingly and allow all to live unmolested.

"Here is something clever and cute from the Galesburg Labor News:

"Whether or not the Manufacturers' Association who were behind the Buck's Stove and Range Company, in instigating this suit, will accomplish their desired results is difficult to say. Trade unionists will fail to see wherein they will. For no power on earth can compel a man to buy something that he does not want to and an announcement something on this order is enough to indicate to a union man what not to buy:

"It is unlawful for the American Federation of Labor to boycott Buck's Stoves and Ranges.

"Justice Gould, in the Equity Court of the District of Columbia, on December 17, handed down a decision granting the company a temporary injunction preventing the Federation from publishing this firm as

"Unfair to Organized Labor."

"The above can hardly be construed to conflict with the law, since it is a statement of facts.

"A funny thing about this case is that the boycott has been on this firm for more than a year. Now, the unions have their attention directed to it for fair. And the peculiar arrangement of type in the said article whereby particular display is given to the words Boycott Buck's Stoves and Ranges and unfair to organized labor, without making these direct statements in the context of the article published, was devised and designed for the express purpose of violating the injunction of this court. * * *

In an editorial in the same issue, he wrote:

"We also have witnessed in the past year most serious judicial invasion and usurpation of individual liberty and human freedom by the abuse of the writ of injunction. An attempt has been made by the abuse of the writ of injunction to deny and prohibit the freedom of speech and the freedom of the press, and men have been cited to show cause why they shall not be punished purely for the exercise of the right of free press and free speech, rights not only natural and inherent in themselves, but guaranteed by the Constitution of our country and which our forefathers fought to estab-

lish, and which a free people never dreamed would ever be placed in jeopardy. * * *

In the October issue in an editorial entitled, "Be Candid, Gentlemen, Evasion and Deception Useless," he wrote:

"This Van Cleave Buck's Stove and Range injunction is an invasion of the right of free press and free speech. For their temerity in upholding these constitutional rights, President Gompers, Secretary Morrison, and Vice-President John Mitchell, of the American Federation of Labor, are now haled before the court in contempt proceedings to 'show cause' why they should not be sent to jail for this exercise of constitutional rights, which are alleged by Mr. Van Cleave to be in violation of the injunction and hence in contempt of court.

"This very case has its origin in the fact that Republican Congresses have steadily refused to remedy the abuse of the injunction in labor cases."

The proceedings of the annual convention of the American Federation of Labor, held in Norfolk, Va., in November, 1907, over which Gompers presided, were reviewed and edited daily by Morrison, the secretary, and reduced to book form; they both took part in the publication and circulation of several thousand copies of these printed proceedings containing the name of the Buck's Stove and Range Company in connection with the "Unfair" and "We Don't Patronize" list; in addition, these copies showed a report by Gompers to that convention which contained the following:

"Recently one of the branches of the Federal courts decided by a majority vote that the boycott is illegal. * * * We should demand the change of any law which curbs the rights and privileges of the workers to exercise their normal and natural privileges. In the meantime, we should proceed as we have of old, and, whenever a court shall issue an injunction restraining any of our fellow-workers from placing a concern hostile to labor's interests on the 'Unfair' list, and enjoining the workers from issuing notices of this character, the further suggestion is made that, upon any letter or circular issued upon a matter of this character, that after stating the name of the unfair firm and the grievance complained of, the words 'we have been enjoined by the courts from boycotting this concern,' should be added with advantage."

He published in the February, 1908, issue of the American Federationist, an editorial of which more than 30,000 copies were reprinted and distributed broadcast throughout the country, one copy being sent to each of the 27,000 unions composing the membership of the American Federation of Labor, and containing the following:

"Justice Gould of the Supreme Court of the District of Columbia, issued an injunction, on December 18, 1907, against the American Federation of labor and its officers, and all persons within the jurisdiction of the court.

"This injunction enjoins them as officers, or as individuals, from any reference whatsoever to the Buck's Stove and Range Company's relations to organized labor, to the fact that the said company is

152 regarded as unfair; that it is on the 'Unfair' list, or on the 'We Don't Patronize' list of the American Federation of Labor. The injunction orders that the facts in controversy between the Buck's Stove and Range Company and organized labor must not be referred to either by printed or written word or orally. The American Federation of Labor and its officers are each and severally named in the injunction. This injunction is the most sweeping ever issued.

"It is an invasion of the liberties of press and the rights of free speech.

"On account of its invasion of these two fundamental liberties, this injunction should be seriously considered by every citizen of our country. * * * With all due respect to the court it is impossible for us to see how we can comply with all the terms of this injunction. We would not be performing our duty to labor and to the public without discussion of this injunction. A great principle is at stake. Our forefathers sacrificed even life in order that these fundamental constitutional rights of free press and free speech might be forever guaranteed to our people. We would be recreant to our duty did we not do all within our power to point out to the people the serious invasion of their liberties which has taken place. That this has been done by judge-made injunction and not by statute law makes the menace all the greater. * * *

"The publication of the Buck's Stove and Range Company on the 'We Don't Patronize' list of the American Federation of Labor is the exercise of a plain right. To enjoin its publication is to invade and deny the freedom of the press, a right which is guaranteed under our Constitution. * * * The matter of attempting to suppress the boycott of the Buck's Stove and Range Company by injunction, while important, yet pales into insignificance before this invasion and denial of constitutional rights. * * *

"The members of organized labor are not themselves obliged to refrain from dealing with the firms on the 'We Don't Patronize' list of the American Federation of Labor. The information is given them. There is no compulsion. They are entirely free to use their own judgment. * * * No person can be compelled to buy an article. If the purchaser chooses to let alone certain products for any reason or for no reason there is no way of compelling him to buy.

"This injunction can not compel union men or their friends to buy the Buck's Stove and Ranges. For this reason the injunction will fail to bolster up the business of this firm which it claims is so swiftly declining.

"Individuals as members of organized labor will still exercise the right to buy or not to buy the Buck's stoves and ranges. It is an exemplification of the saying that: 'You can lead a horse to water but you can not make him drink,' and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not purchase the Buck's stoves and ranges. * * * Labor is earnestly desirous of entering into friendly relations with employers and this is none the less true of its desire to

reach an honorable adjustment and agreement with the Buck's Stove and Range Company; so long, however, as that company continues in its hostile attitude to labor, denying it the right to organize, discriminates against union members, and refuses to accord conditions of employment generally regarded as fair in the trade, it must expect retaliatory measures; these measures always, however, within the law and for the purpose of ultimately reaching an honorable mutually advantageous agreement.

"The publication of the Buck's Stove and Range Company on the 'We Don't Patronize' list of the American Federation of Labor is only an incident in the history of the case. The stoves might have been left as severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing that firm from the list against which we primarily protest, it is the injunction invading the freedom of the press.

"Justice Gould, in one portion of his opinion says: 'Defendants (The American Federation of Labor) have the right either individually or collectively to sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves.'

"Here he states precisely the whole case of the American Federation of Labor. This is what we have done. This is the sum total of labor's offending. The publication of the Buck's Stove and Range Company and other firms on the 'We Don't Patronize' list is merely giving truthful information at the request of our members as to whether or not certain firms employ union men and concede the other conditions of employment usually granted by those concerns which recognize union labor.

"It would seem that having made the above-quoted statement, Justice Gould would have found in it the reason for a refusal to issue the injunction. He, however, goes on to assume that there has been some unwarrantable interference with the plaintiff's business, though neither in his opinion or in the injunction itself does he make it clear how he arrived at the conclusion that the union course was any other than as indicated in his own language."

"In another part of this issue of the American Federationist is published an editorial under the heading 'Free Speech and Free Press Invaded by Injunction Against the A. F. of L.—A Review and Protest'. The editorial contains a full presentation of labor's position in regard to this injunction."

The editorial thus referred to is that identified supra; it and the urgent appeal were disseminated together in circular form.

The Supreme Court of the United States having in *Loewe v. Lawler*, 208 U. S., 274, decided the unlawfulness of the boycott, he in March, 1908, issue published many letters condemning the opinion with the preface:

"Believing that these expressions of opinions largely represent the views of men active in the affairs of labor and public life."

The rights of citizens to discuss or criticize the opinions of courts is not to be questioned; there exists, however, no rights to incite and promote disobedience of and rebellion against their decrees.

One of the letters chosen by Gompers for publication, written by a president of the Cigarmakers' Union contained:

"When I was a boy they used to say 'Watch out or the bogey-man will get you.' * * * When I grew up and joined
153 the union, they said 'Watch out or the Supreme Court will get you.' * * * What cut-throat financiers and grasping employers can not do themselves, they confidently expect the courts to do for them. * * *

"In a representative form of government, which our own is assumed to be, the law ought to be what its makers intended and not what a few judges may say that it is. We think we make the laws, but we know the judges unmake them."

This letter was followed by one from the secretary of the American Federation of Musicians, containing:

"A word on injunctions—if the working men of the country, as a rule would refuse to obey these altogether cruel and unjust injunctions, and take the risk of going to jail, the probabilities are that it would have such an effect upon public opinion that the practice would fall into innocuous desuetude," supplemented by the reminding admonition on the editorial page of the same issue—

"It should be borne in mind that there is no law, aye, not even a court decision compelling union men or their friends of labor to buy a Buck's stove or range. No, not even a Loewe hat."

The preliminary injunction having been made permanent by final decree, signed by the Chief Justice, Gompers, in the April, 1908, *American Federationist*, published editorially:

"The temporary injunction issued by Justice Gould of the Court of Equity, of the District of Columbia, in the (Van Cleave) Buck's stove and Range Company's of St. Louis suit against the American Federation of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia," and repeated the separately printed refrain:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even a Loewe hat."

Another column of the same issue contained over the signature of himself and Morrison an "Official" circular of March 20, stating:

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the products of the Buck's Stove and Range Company of St. Louis."

"Fellow-workers, be true and helpful to yourselves and to each other. Remember that united effort in cause of right and just must triumph."

In addressing a large audience in the city of New York on April 18, 1908, Gompers said:

"They tell us that we must not boycott. But I have no knowledge that any law has been passed or any order issued by any court compelling us to buy, for instance, a range or a stove from the Buck's Stove and Range Company. You know that myself and several others have been enjoined from telling you, we are not pre-

pared to tell you, that the Buck's Stove and Range Company is unfair. There are a number of men who have been having suits brought against them for \$240,000. There is not very much between you and me; but a few hatters in Danbury, Conn., are being sued, for saying that Loewe and Co., Hat Manufacturers of Danbury, Conn., are unfair.

"I am not prepared to say that this is in violation—that they are unfair. Of course, in the case of the Buck's Stove and Range Company, if I told you that the Buck's Stove and Range Company was still unfair, when I got back to Washington, or some other place where they say that people play checkers with their noses—well, as I say, I am not prepared to tell you that these things are unfair. But there is no law, no court decision that compels you to buy them, nor does any law compel you to buy anything without the union label."

In a public address to a large audience in Chicago, Ill., Gompers said:

"I might say, just parenthetically about the Hatters' case, that you are not now permitted to boycott the Loewe hats, but I want to call your attention to the fact that there is no law compelling you to wear a Loewe hat nor has any judge issued a mandamus compelling you to buy a Loewe hat. That applies equally to Mr. Van Cleave's stoves and ranges. And, by the way, I don't know why you should buy any of that sort of stuff. I won't; but that is a matter to which we can refer more particularly in our organizations."

And, in the May, 1908, *Federationist*, published editorially:

"I want to assure you, on my word of honor, that so long as I live I will never buy a Loewe hat or a Buck's stove or range until these gentlemen come into an agreement with organized labor and grant conditions of fairness. Then they will get support and help. Until then you may call it by any other name—boycott or no boycott, but I won't buy your hats anyhow."

For the purpose of more thoroughly and widely disseminating this counsel and this appeal to disregard the injunction, he republished that statement made in his Chicago address on pages 467-8. Again repeating it in substance in the July number, editorially, thus:

"The Supreme Court of the District of Columbia has made permanent the injunction issued by Justice Gould, enjoining the American Federation of Labor, its officers, its affiliated unions, and their members and friends, from declaring that the Buck's Stove and Range Company of St. Louis is on the unfair list of the American Federation of Labor or the publication of that statement in the *American Federationist*.

"An appeal will be taken to the Court of Appeals of the District of Columbia, and if necessary to the Supreme Court of the United States.

"The injunction does not compel any one to buy the Van Cleave Buck's stoves and ranges, nor has any decree been issued compelling any one to buy Loewe hats."

In September, 1908, he made a report to the Executive Council of the American Federation of Labor, which he published in the

Federationist for the month of November, 1908, widely disseminated. In the report the following appears:

"Buck's Stove and Range Company's Injunction Suit.

"As you have been previously advised, Vice-President Mitchell, Secretary Morrison, and myself have been cited to appear before the Supreme Court of the District of Columbia to show cause why we should not be punished for contempt for violation of the court's injunction. The petition which the Buck's Stove and Range Company asks for our punishment on was published in the September issue of the American Federationist, and I suggest, in connection herewith, that it be read, as it will show to what extent the E. C. and officers and members of affiliated organizations, and all others, are enjoined from doing

154 "Your attention is especially called to a feature of this injunction. If all of the provisions of the injunction are to be fully carried out, we shall not only be prohibited from giving or selling a copy of the proceedings of the Norfolk convention of the American Federation of Labor, either a bound or an unbound copy, or any part of 1908, either bound or unbound, but we, as an Executive Council, will not be permitted to make a report upon this subject to the Denver convention. Unless we violate the injunction, we are prohibited from referring to the case at all, either in our report to the convention or to others, and should a delegate to the convention ask the Executive Council what disposition has been made, or what the status of the case is, we will be compelled to remain silent.

"For one I am unwilling to be placed in such a position. I have neither the inclination nor the intention of violating the process of the court, but I can not see how it is possible for us to hold up our heads as honest men and still refuse to give an accounting to our fellow-workers, and to the public, as to the status and outcome of the case."

In a speech in Baltimore in October, 1908, he said amongst other things:

"The injunction issued against me by Judge Gould is based on Judge Taft's decision. By that injunction I am restrained from talking to you about this case. No labor leader can mention it in speech or circular. I am enjoined from telling you that I won't buy a Buck's stove or range. But I won't buy one just the same. I am enjoined from telling you that there is no law compelling you to buy one; but there isn't any such a law. Because of this fact I am on trial and may have to go to jail. There is no fun in going to jail and I do not want to go; no man would feel more keenly the sting of having his liberty restrained. But the whole world would be a narrow cage were I denied the right of the freedom of speech. I say these things with a full consciousness of what the responsibility may be. But jail or no jail I am going to discuss the principles of liberty."

In the December, 1908, Federationist was published "An Address

by Samuel Gompers in Indianapolis, Ind., on September 29th," which contained:

"I am enjoined by that court order from even mentioning the case in any manner. I am in contempt of court right now for speaking of the case, but I propose to speak of it just the same. I may go to jail, but I shall discuss it. If I don't I will explode."

In discussing the contempt proceedings against him in the court in Washington Gompers said:

"As long as I retain my health and sanity I will speak on any subject on God's green earth. As editor of the American Federationist I will discuss every subject that appeals to me as just and right. I have not surrendered and am not likely to surrender the right of freedom of speech and freedom of the press."

In the January, 1909, American Federationist he published his speech made in Washington at a reception tendered to the officials of the American Federation of Labor on their return from the Denver convention; it was, in part, as follows:

"My friend, 'Jim' O'Connell, who does not want to go to jail, and Frank Morrison, John Mitchell, and myself, who, perhaps, will have to go to jail, it is only a difference of degree. 'Jim' O'Connell is just as thoroughly enjoined as we have been—it is simply a circumstance that he has not been cited to be called upon to execute a decision which he had to render as a member of the Executive Committee of the American Federation of Labor.

"The convention decided on a certain course and Frank Morrison and I carried it out. I do not want to discuss the injunction after the very elaborate discussion by Mr. Morrison, but I want to present one feature which he did not touch upon. * * * Now, you know that the Supreme Court of the District of Columbia had issued an injunction against the American Federation of Labor, its executive officers, our affiliated organizations and their members and their friends and sympathizers, and agents, attorneys and counsel, conspirators and coconspirators, and whatnot, amongst these you are included.

"The court issued the injunction prohibiting us from publishing, printing, from writing, from speaking, from whispering, that the Buck's Stove and Range Company is unfair to organized labor, and for any one to publish, to print, to write a letter, or to speak of this is in violation of the terms of the injunction, yet the Constitution of the United States provides that the right of freedom of speech and freedom of the press and public assemblage shall never be denied or abridged. In other words, an injunction of such a character is an invasion of the constitutionally guaranteed rights of every man and woman in this country.

"I have said and now I want to repeat here, not in bravado, but in full consciousness of the responsibility with which such statement may be interpreted, that when it comes to a choice between obeying an injunction denying me the right of free speech, free expression of the thoughts which come to my mind, I shall have no hesitancy in standing upon my constitutional rights.

"We have a dispute with the Van Cleave Buck's Stove and Range

Company, I have been enjoined from saying that I will not buy a Buck's stove or range, and I won't and because I have said this in several ways, by discussion of the case editorially in the American Federationist, and Frank Morrison has sent out the American Federationist containing these things which I have said and because John Mitchell was presiding over the convention of the United Mine Workers, when a motion was placed before that body, advising the members of the Mine Workers not to buy a Buck's stove or range, we have been tried for contempt—that is, we have been called to show cause why we should not be sent to jail, and I could not show cause.

"The things with which I have been charged with, I did. I have not denied them. I have discussed them on the platform, as I discuss them here. I have written circulars about them. Secretary Morrison sent them out. * * * and I ask you now to place yourself in my position. What would you do?"

On another page of the same issue was published amongst other things a resolution adopted at the Denver convention, which is as follows:

"Buck's Stove and Range Litigation.

"Whereas, the president of the Buck's Stove and Range Company, Mr. J. W. Van Cleave, who is also president of the
155 National Association of Manufacturers, has used such part of the million and a half dollars war fund as he has succeeded in hoodwinking the membership of the Manufacturers' Association to pay, for the purpose of defraying expense to prevent legislation from the United States Congress in the interest of labor and the people generally, and influencing political parties from declaring in favor of relief prayed for by labor; and

"Whereas, in pursuance of the objects of the said J. W. Van Cleave, president of the Buck's Stove and Range Co., and president of the National Association of Manufacturers, to disrupt labor organizations, he has caused President Gompers, Vice-President Mitchell, and Secretary Frank Morrison to be summoned in the District Court of the District of Columbia to show cause why they should not be punished for contempt of court, be it

"Resolved, That the editor of the American Federationist, the labor press, all friendly publications, the committee of central bodies and all organizers of the A. F. of L. be and they hereby are requested to carry on a campaign of education so that the rights and interests of labor and the people generally may be best conserved.

"Resolved, That in order to afford the best legal protection to those who are at present defending themselves in the interest of union labor, and those who may be attacked on account of their attitude in the Buck's Stove and Range Company's (suit) case, that the Executive Council be authorized to levy such assessments from time to time as in its judgment may be necessary to protect and advance the rights and the interests of the trades union movement; be it further

"Resolved That if the present contempt proceedings instituted against President Gompers, Vice President Mitchell, and Secretary

Morrison result in their being found guilty, that on the second Sunday after such finding all central bodies be requested to hold protest meetings and invite friendly societies and the general public to participate.

"The report of the committee was unanimously adopted."

In the *Federationist* of February, 1909, he printed a paper signed jointly by Gompers, Mitchell, and Morrison, containing:

"Some carping critics have said 'why not obey the terms of the injunction until the courts of last resort shall have rendered their decision?' We answer that such a course was absolutely impossible. It would have perverted and suppressed the lawful proceedings of a convention of the American Federation of Labor, a lawful gathering and body. * * *

"We had a right to disregard the injunction in those particulars, of the right of free press and free speech, and we realized at all times that we did so at our peril—that is, the peril of being judged guilty of contempt and receiving the most extreme sentence which any judge might impose. All of this has happened. We realized from the beginning that we might have to sacrifice our personal liberty in order to defend the liberties of the people of our country. We have no complaint to make on personal grounds. We stand ready and willing to serve the sentence imposed if the higher courts shall so adjudge."

In his annual report to the American Federation of Labor convention in 1909, in Toronto, he said under a heading, "The Boycott—Judicial Opinion:"

"While the discussion of greater issues in the past year have tended to relegate to the back-ground such rights as that of the boycott, yet I should be recreant in my duty were I to remain silent upon that subject, and thus, perhaps, strengthen an impression which has been assiduously given out by our opponents, that the boycott—that is, the right to withdraw patronage, to bestow it upon whom we please—has been withdrawn from the workers of the country during the legal proceedings in relation to the injunction secured by the Buck's Stove and Range Company.

"It will be remembered that the injunction was sought to primarily restrain the people in their right to quit buying Buck's stoves and ranges. It overreached itself so far that the right to freedom of speech and press became involved. However no consideration of the injunction has been possible by the courts without taking up the principle involved in the boycott."

This part of his report was referred by Gompers to the Committee on Boycotts, which in turn reported to the convention, amongst other things, after re-quoting what Gompers had said in his report:

"* * * But, under present conditions, the boycott is a necessary legal and moral weapon, and one which the president well says, there should be no hesitation to resort to when other remedies fail, and the occasion demands the unusual and drastic antidote. * * *

"We say, that when your cause is just and every other remedy has been employed without result boycott; we say, that when the

employer has determined to exploit not only male adult labor, but our women and children, and our reasoning and appeal to his fairness and his conscience will not sway him, boycott; we say, that when social and political conditions become so bad that ordinary remedial measures are fruitless boycott; we say when labor has been oppressed, browbeaten and tyrannized, boycott; and finally we say, we have the right to boycott, and we propose to exercise that right.

"In the application of this right to boycott to paraphrase the president, 'we propose to strive on and on.'"

The convention adopted the report of the committee although the injunction was still in effect.

In an editorial in the April 1909, *Federationist*, he summarizes his doings in a form which amounts to a proclamation of his own guilt as charged thus:

"A Self-Inflicted Boycott.

"If there ever was a self-inflicted and personally conducted boycott it has been that engineered by the Van Cleave Buck's Stove and Range Company against itself. Its hostile sensational and unjust attacks upon the men of labor and their organizations have supplied the material for keeping the boycott fresh in the minds of all purchasers. It has been the action of the Buck's Stove and Range Company itself far more than anything labor has done, which has made this the most spectacular boycott of our times.

"While the Buck's Stove and Range Company was published on the "We Don't Patronize" list of the American Federation of Labor along with a number of firms whose relations with organized labor were unfair, yet this firm attracted no more attention than many of the others until Mr. Van Cleave, through his man Brandenburg and the Pinkertons and Turner Detective Agencies began a crusade of character assassination against the men who had devoted their lives to securing the rights and liberties of their fellow-men.

"Mr. Van Cleave, being president of the Buck's Stove and Range Company and also president of the National Manufacturers' Association, all of his hostile acts took on an intensified meaning to the men of labor. The real activity in the boycott began when an application for an injunction against the American Federation of Labor, to restrain it from boycotting this firm followed the personal attacks upon the men of labor. Then, indeed, the union men and their friends from the Atlantic to the Pacific sat up and took notice and remembered the unfair standing of this firm when they were buying goods.

"When the temporary injunction was issued prohibiting the exercise of the right of free press and free speech and the daily press rang with the statements of the case in relation to the Buck's Stove and Range Company, then, indeed, many people who had not been concerned with the attitude of labor in any other boycott concluded that they would not purchase such goods. Then there was the making permanent of the temporary injunction and the appeals for funds by the American Federation of Labor with which to

carry the case to the higher courts. There was the president's report to the conventions, the action of the two conventions—all despite the clause of the original injunction prohibiting the exercise of free press and free speech in relation to the Buck's Stove and Range Company. It was these things which kept the boycott fresh in the minds of the workers and their friends and aroused the most intense interest. Every hostile move of the Van Cleave Buck's Stove and Range Company, every action leading to greater publicity of the case increased the boycott. It must be remembered, too, that the injunction did not and does not apply beyond the District of Columbia.

"The labor press of the country and the official journals of the various trades felt free to publish the non-union and hostile status of the Van Cleave Buck's Stove and Range Co., and to comment freely upon the original injunction and contempt proceedings. The institution and prosecution of the proceedings for contempt of the injunction and the sentence of Gompers, Mitchell, and Morrison to imprisonment for contempt made every union man realize that while constitutional rights are greater than property rights, a strong effort was being made to establish to the contrary. By a perfectly understandable mental process all of these happenings kept before the public the fact that labor had a formal boycott against the Buck's Stove and Range Company, hence, we repeat the Buck's Stove and Range Company has been the most potent agent in fastening upon itself a boycott—primary, secondary and possibly, everlasting—because it has assumed that the courts of the land would bolster up its every attack upon the workers regardless of how far it invaded the inherent and constitutionally guaranteed rights of the people."

In the face of such evidence he has taken his oath that he obeyed the injunction, as is shown by the following:

"Q. Were any of your utterances either in print or oral, in speeches or otherwise, made or done for the purpose of and with the intent of violating or evading in any manner the preliminary injunction or any order or decree in the Buck's Stove and Range case. A. There was not one, sir.

"Q. I have neglected to call your attention to a letter in which you said—an editorial which you wrote, 'Go to—with your injunctions.' I want you to state what you meant by that. A. There was no intention on my part to have the dash. What I intended was that that should be a comma, Go to, with your injunctions; in other words, I had in mind, 'avaunt,' 'quit,' 'stop,' but there was no thought in my mind at all compared to the inference which was drawn from it, because I am not accustomed to using language of that character either in print, in conversation, or on the platform.

"Q. You read Shakespeare, do you? A. Yes, sir. I am a very great lover of Shakespeare and I seldom, in travelling or having opportunity, but what I have a pocket edition of one or two of Shakespeare in it. I remember that I had the thought in mind, as I have seen it used there and elsewhere, 'Avaunt,' 'Quit my sight,' 'Get thee to a nunnery,' 'Go to, with thy prattle.' It was intended

in that sense, without intending to be disrespectful to the court" (page 1012).

Interrogated upon the editorial in the February, 1909, issue of the American Federationist, wherein the three defendants had stated:

"Some carping critics have said, 'Why not obey the terms of the injunction until the courts of last resort have rendered their decision.' We answered that such a course was absolutely impossible. It would have perverted and suppressed the lawful proceedings of a convention of the American Federation of Labor, a lawful gathering and body. It would have conceded the surrender of the principle of freedom of speech and of the press."

"Q. Am I right in assuming, then, you did obey the terms of the injunction until the court of last resort had rendered a decision?"

A. You are right in assuming I said what I said.

"Q. That was true? A. It was true.

"Q. It was impossible for you to obey the terms of the injunction according to your holding until the courts of last resort had rendered a decision? A. The language conveys exactly what I was meaning to say and what I say now.

"Q. As a good American citizen are you prepared to adopt the test case which you submit when decided by that tribunal? Are you? (Supreme Court of the United States.) A. As a final word of the highest judicial tribunal of the country, from which there is still another appeal—that is, to the people and to Congress, who at times reverse decisions of even the Supreme Court of the United States by statute law or constitutional amendment.

"Q. I suppose that you read and studied the opinion before you answered the charges in this case, did you not? Did you familiarize yourself with it? A. Not very well, sir.

"Q. Are you or are you not aware that the court held in this case that the courts have the power to enjoin boycotts? A. I do not—

157 "Q. You do not, or did not? A. I did not and do not.

"Q. Are you aware that in the case the court held that parties were bound by injunctions until they were set aside by some higher authority, using this language:

"If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery?"

A. I did not.

"Q. You were not aware of that? A. No. I knew that the Supreme Court of the United States reversed the sentence of the Hon. Justice Wright, and which was maintained by the Court of Appeals, and that I was interested in, and I think that I have not read fully or thoughtfully the decision of the Supreme Court of the United States.

"Q. Let me invite your attention to the concluding paragraph of the charges under which you are now before the court: 'With regard

to each and every of the acts, statements and publications above set forth, the said Samuel Gompers asserted and it may be that he believed that the injunction was not binding upon him because of what he claimed to be his constitutional right of free speech and of free press; and it may be, that, now that this contention upon his part has been determined by the Supreme Court of the United States to be unfounded, he may be prepared to make such due acknowledgment, apology and assurance of future submission to the court as may sufficiently answer the necessary purpose of vindicating its authority, and that of the law.' Did you answer or plead to that, without advising yourself of what the Supreme Court decided, when it was called to your attention thus by the very charges which you were called upon to answer? A. Where were you reading?

"Q. The concluding paragraph (indicating). A. My understanding of it was—my understanding of the decision of the Supreme Court of the United States, only casually obtained, was that it did not decide upon the question of the right of free speech and free press, and I interpret that last paragraph of the committee which presented the charges as simply an effort to humiliate me and break my heart and break my spirit, and it was a thing that I was not inclined to permit.

"Q. You consider an invitation to you to recognize a decision by the Supreme Court of the United States as final and an offer to govern your conduct in accordance with it in the future, as an effort to humiliate you and break your heart? A. The very language employed was an insult.

"Q. No; you have not said what language was that you considered humiliating. Here are the charges. I would like to have you take them and point out the words which you think humiliate you. A. Referring to me, the language goes on: 'He may be prepared to make such due acknowledgment, apology, and assurance of future submission to the court as may sufficiently answer the purpose of vindicating its authority, and that of the law.'

"I had violated no law. There was an allegation that I had violated the terms of an injunction, the principles of which I was contending upon the ground of free speech and free press, and a right to exercise thereof.

"Q. That is the only explanation which you wish to give of your refusal to avail yourself of an opportunity offered you by the charges? A. I have no other to make.

"Q. You have no explanation that you wish to offer of your failure to examine the Supreme Court decision to see whether what the committee had said about it was true? A. I did not have the opportunity of reading it fully.

"Q. If the committee are right in their construction of that opinion, that the Supreme Court did deny your contention that the doctrine of free speech and free press enables you to violate the injunction against such publication as you are guilty of, you think that it would be humiliating to you to make an apology to the court and assure it that in the future you would obey its orders? A. It is

not a question, nor is the question on contention now as to what I shall in the future do, nor am I called upon now to say what I shall do in the future. I simply say now I shall endeavor to contend so long as life remains in me, for the right of free speech and free press, untrammelled by an injunction."

In his report to the Toronto convention of 1909, published in the December Federationist, he said:

"What are the offenses for which Mitchell, Morrison, and I are sentenced to long months of imprisonment, and the ignominy of being classified as criminals? We have dared to defend our constitutional rights as men and as citizens, despite the injunction of a court which sought to invade the rights of free speech and free press, secured to the Anglo-Saxon people centuries ago by Magna Charta, and clinched by the first amendment of the Constitution of the United States. * * *

Interrogated upon this subject:

"Q. You did not have to do anything, despite the injunction, in order to make a test case of it? A. Oh, no; the question of 'despite' may not be the best word, expressive of what was in my mind, but it was that the injunction forbade the exercise of the freedom of speech and the freedom of the press, and that I proposed to exercise that right.

"Q. Notwithstanding that prohibition in the injunction? A. If the injunction forbade the right of free press, I proposed to exercise that right and take the consequences, whatever they may be. * * *

"Q. Was it the injunction in the Buck's Stove and Range Co.'s case? A. It was the injunction of Justice Gould.

"Q. In the Buck's Stove and Range Company case? A. In the Buck's Stove and Range Company case.

"Q. You meant by that paragraph, did you not, that you were continuing to do the things which the injunction forbade you to do, because you regarded it as an invasion of your rights to free speech and press? A. I said what I meant to say—that I contended that we have the right of free press and free speech, and that no restraining order of a court could, in advance, restrain the expression of free speech and free press.

158 "Q. I suppose, of course, you being one of the persons (mentioned) being restrained by name in the order, acquainted yourself with its contents and provisions, did you? A. I did.

"Q. You knew, then, that the American Federation of Labor and the individual defendants themselves, yourself included, were by its terms restrained and enjoined until the final decree in the case from conspiring, agreeing or combining in any manner to restrain, obstruct, or destroy the business of the complainants, did you? A. I did, sir.

"Q. Or to prevent the complainant from carrying on the same without interference from you or any of you, did you know that? A. I did and carried it out.

"Q. And from interfering in any manner with the sale of the

products of the complainant's factory or business, by you or any of you? You knew that you were enjoined from doing that? A. I was so enjoined and did refrain—if I ever did before interfere.

"Q. You knew, further, that you were restrained by this order from distributing through the mail or in any other manner any copy or copies of the American Federationist, or any other printed or written newspaper, magazine, circular, letter, or other documents or instruments whatever which should contain in any manner or refer to the name of the Buck's Stove and Range Company, its business, its products in the 'We Don't Patronize' list? You knew that, did you? A. I knew that, but that was the—these were the very things for which we were contending—the right of free speech and free press, and the contention that no restraining order could in advance prohibit the publication.

"Q. You took that position, did you? A. I did.

"Q. And acted upon it? A. I did.

"Q. And then you did obey the injunction? A. I did.

"Q. How did you act upon that principle and at the same time obey the injunction? A. When a court issues an injunction denying a constitutionally guaranteed right, the constitutional right must be exercised by a self-respecting citizen.

"Q. But exercising that constitutional right in disobedience of the injunction does not obey that injunction, does it? A. That is the very contention which we have made all through and are making now.

"Q. That you had a right to disregard certain commands of the injunction? A. That an injunction which is void does not necessarily require obedience to its terms—to part of its terms.

"Q. There were part of the terms of this injunction which you did not obey? A. Where it interfered with the free exercise of free speech or free press, I stood on my constitutional rights.

"Q. And continued to exercise what you call free speech and free press, regardless of the injunction, to the extent of discussing the Buck's Stove and Range Company and its quarrel with labor, and the undesirability of purchasing its goods? A. I did so for the purpose of contending in the courts and through the congressional and presidential campaign, and for the purpose of securing relief at the hands of Congress upon these very questions at issue.

"Q. And under your view of your inculcated doctrines, who is to determine whether or not the decree of the court is or is not constitutional under the Constitution of the United States? A. When not only the client—but the client's—when a citizen, I should say, is fully convinced that an order of the court transcended its power—that is, issued an order which is void and unconstitutional, and that conviction of the citizen is fortified by the advice of counsel, that is the position to take.

"Q. With that correction, the paragraph I have quoted represents your understanding and the interpretation of the injunction, does it? A. That is, my construction of the injunction was, that as to its real purpose, it was to prevent a boycott which some of the labor organizations had declared upon the Buck's Stove and Range Co., and which the American Federation of Labor had approved. I did

not have in mind—rather it did not seem to me that the court had the power to issue an injunction: that it was in excess of the power of the court to prohibit the publication of ordinary news.

"Q. Please now let me invite your attention to your report to the 29th annual convention of the American Federation of Labor at Toronto, as published in the American Federationist for December, 1909, at page 1061. That report describes the injunction as restraining yourself and your associates defendants from 'conspiring, agreeing, or combining in any manner to restrain, obstruct, or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business.' That was your understanding of the scope of the injunction and its purpose? A. * * * As a matter of fact, as I said a while ago, my understanding was that the injunction was issued for the purpose to secure relief to the Buck's Stove and Range Company from a boycott, an alleged boycott.

"Q. I now invite your attention to a further paragraph in the same report, which I think you will find several pages later. * * *

"* * * The attempt to enjoin or to prevent the publication of the 'We Don't Patronize' list of the American Federation of Labor, whether by injunction process or other judicial or legislative means, would be in direct violation of the constitutional guarantee and would indeed abridge free speech and free press. In all the land there is neither law or power to enforce such a decree." You knew that that was the printed proceedings, did you? A. Yes, sir, and I voluntarily, however, discontinued the name of the Buck's Stove and Range Company upon the 'We Don't Patronize' list.

"Q. But you knew that the injunction prohibited you and your co-defendants from publishing in the Federationist or anywhere else any reference to the fact that the Buck's Stove and Range Company had been on the 'We Don't Patronize' list or that it had any controversy with your labor organization? You knew that?

159 A. I knew that it was in excess of the power of the court to say that."

He testified that a copy of the report of the Norfolk convention was sent to each of the 312 delegates, to each affiliated international union, 118 in number, and to each of the organizers of the American Federation of Labor, from 800 to 1,200 in number.

In his report to the Executive Council, Gompers said:

"In conformity with the provisions of this resolution No. 49, a circular was issued on November 26th, to all affiliated organizations with regard to the suit brought by Mr. Van Cleave for the Buck's Stove and Range Company against the American Federation of Labor, the Executive Council and others. The Executive Council has been kept advised from time to time as to what steps have been taken in this matter."

Who can read the foregoing extracts from his testimony and continue to believe that Samuel Gompers did not wilfully violate the injunction or that he is regardful of his oath?

Mitchell was president of the United Mine Workers of North

America, and as such presided at its annual convention in January, 1908. That convention adopted the following:

"Resolution No. 73.

"Whereas, The Buck's Stove and Range Company, of St. Louis, Mo., having taken legal steps to prevent organized labor in general, and the officers and executive committee of the A. F. of L. in particular, from advertising the above named firm as being on the 'Unfair' or 'We Don't Patronize' list, and

"Whereas, By the issue of such an injunction, or restraining order, as prayed for by the above firm, organized labor will be deprived of one of its most effective weapons, and

"Whereas, J. W. Van Cleave, the president of the above named firm, also president of the National Manufacturers' Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"Resolved, That the U. M. W. of A., in nineteenth annual convention assembled, place the Buck's stoves and ranges on the unfair list, and that any member of the U. M. W. of A. purchasing a stove of above make be fined \$5, and failing to pay the same be expelled from the organization."

The violation of the injunction by this promotion of the boycott is one of the specifications charged against him.

The official record of the convention shows that he was in the chair and presiding when the resolution was offered, read to the convention, put to vote and declared carried; this he does not deny. He states that he does not remember: "I have no recollection of resolution No. 73 at all;" yet he testifies that knowing W. D. Ryan (who read the resolution to the convention) "very well;" knowing each of the eleven members of the Committee on Resolutions which recommended it; knowing the stenographer who reported the proceedings of the convention; knowing a large proportion of the 1,200 delegates, yet he has never made a single inquiry of any of them to ascertain whether in their recollection it was he who put the resolution and declared it carried. This failure indicates a consciousness that the inquiry would not redound to his advantage upon this point.

In January, 1909, he proceeded to Indianapolis to address the annual convention of United Mine Workers upon the subject, "Judicial Procedure in Injunction Cases," as he says; he did address to that convention the following:

"The court says further that I presided as president of the United Mine Workers at a convention here at which a resolution was passed violating that injunction. There are, no doubt, in this convention hundreds of delegates who were here a year ago and who know that I had no knowledge that the resolution was to be introduced. They know I had nothing to do with its preparation, with its consideration, or with its introduction. It came before us as all resolutions do. As the chairman what was I to do? I had, it is true, three alternatives: I might have resigned the presidency of the United Mine Workers of America; I might have been cowardly and called someone else to the chair and let him accept the responsibility—ask someone else to accept the responsibility of that I dared not do my-

self; or I might have accepted the last alternative—I might have stood up before you and advocated the cause of a company that was having trouble with its employees. Does the man who respects me least imagine for a moment I would become the advocate and defender of a company that was at variance with its employees? Would I stand here and fight the cause of a corporation that was trying to destroy the union in its employment? What could I do? What could any self-respecting man do? Would he not have done as I did?

"It is true that technically I was guilty of violating the injunction when I presided over the meeting that adopted this resolution; but I am no more guilty than any other man who was present in the convention at that time. Indeed I presume that before a jury I would be considered less guilty; because I did not vote for it, and every one else did. I did not vote for the resolution because I was presiding."

When he made this declaration his memory contained the incident, or he could not have recalled and related it.

In the February, 1908, *Federationist* appears a paper prepared and signed by Gompers, Mitchell, and Morrison, containing, from Mitchell's pen, the following:

"Mr. Mitchell is charged with and admits having presided at a convention of the United Mine Workers of America at which a resolution was adopted declaring 'unfair' the products of the Buck's Stove and Range Company.

"It was Mr. Mitchell's duty as president of the mine workers' organization to preside over this convention. He had no knowledge that a resolution upon this subject was to be considered, and when it came before the convention he was so little impressed with its significance that he did not even remember the subject of the resolution until the contempt proceedings were instituted. However, even though he were conscious of the full import of the resolution referred to, he committed no offense against the law by retaining his position as presiding officer of the convention when the resolution was adopted.

"He had, of course, three alternatives, none of which a self-respecting man could have availed himself. He could have resigned his position as president of the United Mine Workers of America,

160 or he could have called some other member to take the chair, thus, shirking his own responsibility by placing it upon the shoulders of another, or he could have become the advocate and defender of the Buck's Stove and Range Company and opposed the passage of the resolution.

"The injunction did not require Mr. Mitchell to advocate the cause of the concern, he was not commanded to defend its attitude in the controversy with its employees; but it seems that his failure to do so constituted an offense against the court for which he is sentenced to prison."

Since he made the admission contained in this formal and deliberately prepared document, his memory may by lapse of time have grown devitalized against the day when he gave testimony that he did not remember. The court is reluctant to impute or suggest

conscious evasion on his part, and feels neither willingness nor purpose, even indirectly, to put out the inference that he has falsified. The court was well impressed with his capacities and his apparent candor, save in the particular of his hostile habit toward the court, his readiness to mis-represent its attitude and show it to his followers in a false light. This is enough illustrated by a single incident.

The first contempt proceeding charged him with having signed the "Urgent Appeal," and that document went out with his name appended and was so published in the American Federationist. In the current proceeding he testified that he did not himself sign it, but that in testifying in the first trial he "withheld from the court" this information.

(Page 1363) "I withheld the information that I had not signed the 'urgent appeal.' I withheld the information that I was not present at the meeting of the Executive Council of the American Federation of Labor. * * * I went to trial, making substantially no defense of myself in the last hearing."

In addressing the annual convention of the United Mine Workers of America, January 22, 1909, he said on this subject, patently seeking to inflame his hearers with antagonism to the court by whatever mis-representation was necessary to that accomplishment:

"We say, too, that this case emphasizes the necessity of legislation that will secure to every citizen the right of trial by jury before he shall be sent to jail.

"Let me illustrate the importance of trial by jury by elucidating my own case. For instance, I am convicted of two things. Of all the charges against me I have been found guilty on two. One is that I signed and helped to circulate a pamphlet, a circular designated 'The Urgent Appeal.' This 'urgent appeal,' by the way, was a circular letter sent to all labor unions in the country asking for money to defend a law-suit. I am charged with having signed and circulated that appeal. The fact of the matter is this: I never signed that appeal; I never saw it; I was not at the meeting where it was prepared; I knew nothing of it until I was cited to appear in court. If I had been tried before a jury it would not have been difficult to have demonstrated that I was not guilty at all of this charge brought against me. It is not material to the case that I would have signed it had I been there. * * *

No word of the truth that his name was appended to it; that when charged he did not deny signing it, made no defense and purposely concealed from the court when testifying, that he had not personally signed it. No word of the truth that others were authorized to sign it for him; no word disclosing his inward recognition of his own responsibility, as shown by his sworn statement to the court itself:

"A. The rule of the Council is that any official document that is issued by the American Federation of Labor may be signed by each member of the Executive Council—that the officers of the American Federation of Labor may sign members' names, each member of the Council unless they specifically dissent, and that has been the cus-

tom in the American Federation of Labor, as I understand it, for some years."

"Q. You understand that your signature was attached in pursuance of that custom? A. Entirely, and that of course with no dissent on my part. Had I been present I should have authorized the use of my signature."

In the same speech, to the miners' convention of 1909, he continued:

"Now, take the other case; take the man who is tried for contempt of court. Instead of being, like the murderer, presumed innocent until he is proven guilty, this man charged with contempt is cited in this language: 'You, John Mitchell, are commanded to appear in the court, and show cause why you should not be adjudged guilty.' He is presumed to be guilty until he has proven his innocence. He is not tried before a jury; he is tried before a judge who has been offended, or at least before an associate judge of the same court. He is not confronted with his accusers; he is not provided with lawyers to defend him; he is at the mercy of the court whose edict can not be set aside. I ask you, gentlemen, is that your conception of American fair play and American liberty?"

That each several statement, save that the trial of contempts is for the judge, was not only misleading but untrue, his own experience then recent, had taught him and made him know.

There can be no doubt that he has informed his followers, and desires them to believe, that he took part in the passage of the resolution for the distinct purpose of opposing the court and its decree of injunction. The part which the evidence shows him to have taken in the convention, coupled with his subsequent declarations and admissions, require and compel the conclusion that he wilfully aided the passage of the resolution, however much we would be glad to reach a different belief, did moral and intellectual honesty permit. Civilly perhaps, but none the less determinedly, he has rejected the practical invitation of the court to embrace immunity at the small and honorable price of admitting that he is ready hereafter to abide by the tribunals of the people and the law of the land. When he arrived at the ending of his cross-examination the following transpired (test page 1428):

"The COURT: Mr. Mitchell, the court has attended with interest to the testimony which you have given and from which the court is not reluctant to believe that it lies in your power to bring good, enlightenment and advancement, or, on the other hand, great evil, tribulations, and distress to your followers, according as the doctrines which you teach and by teaching persuade them to embrace, agree with the principles of law and the science of social government. Let you be apprehensive of the purpose of the questions which the court may direct to you, that purpose is in advance stated
161 to be this: To evoke from you a final and sincere expression of your convictions at this time (in view of the decisions of this and other courts) upon the point of the obligation of the citizen to accord obedience and submission to the orders and the judgments of the judicial tribunals of the land which are erected and main-

tained by the people for the settlement of controversies between individuals."

After which a colloquy between the court and witness which contained:

"The COURT: Have you read the decision of the Supreme Court of the United States quoted from by Mr. Davenport (the case of himself and the other two)?

"Mr. MITCHELL: No. I have not read it with care. I doubt if I ever read it at all before today. I read the newspaper accounts of it, and this morning I tried to read it all, but at a time when the opportunity was not good for understanding it.

"The COURT: I commend to you its reading over night, and invite any further expression of your views upon the points about which I have just been questioning you, when the court reconvenes."

And during the proceedings of the next day:

"The COURT: I invite again, and ask you, Mr. Mitchell, after reading as I assume you have, the decision of the Supreme Court in the Buck's Stove and Range Company case, to express what your convictions are upon the point of the duty of citizens to obey decrees of the courts until they are set aside by some proceeding," and then a further colloquy opened by a part of one of Mr. Mitchell's answers:

"Mr. MITCHELL: * * * If the court were to say to me that I do not have the right to make political speeches advocating judicial and legislative reforms, I would feel under those circumstances that my highest duty to the country, my highest duty to my fellows, would require that I exercise my rights and make my political speeches. So I am trying to separate the thoughts that these are the things I am contending for. I am not asking the right to go and sneak behind the court's back and try to escape responsibility by subterfuge. That I would not do.

"The COURT: Nobody has ever suggested that the right to that kind of discussion does not belong to every citizen. There is no such question as that involved in this case and never was. The right of citizens to discuss matters of political reform, and the right of citizens to discuss the merits and rightness of legal decisions and opinions are questions, neither of which were ever in this case.

"Mr. MITCHELL: I understand your honor, that in this case evidence is submitted to the court that men, defendants in this case, have, while making political speeches, purely political speeches, violated the order of the court because in those speeches they have used, as illustrations of the wrongs they sought to correct, the quarrel between the Buck's Stove and Range Company and its employees.

"The COURT: Those speeches were not offered in evidence for a purpose such as that. Those speeches were offered in evidence to show that on certain occasions, in public utterances, no matter when or where, they had used language which forwarded the boycott, and with the purpose of forwarding the boycott. That is the only theory upon which those speeches were introduced.

"Mr. MITCHELL: My understanding was that this language referring to the Buck's Stove and Range Company was used by men

on the political platform, taking part in a campaign, and that because, in the course of their addresses, reference was made by way of illustration to the controversy between the Buck's Stove and Range Company and its employees that constituted, in the opinion of the committee, a violation of the court's injunction. I understood, too, that your honor, in your decision sentencing Mr. Gompers, Mr. Morrison, and myself to prison, employed the language that while the Constitution did prohibit Congress from abridging the freedom of speech—I may not use the right word 'abridging'—it did not deny that right to the court. That was my understanding of the language of the court. From the language, of course, I thoroughly dissent, if I have correctly interpreted what the court said.

"The COURT: The proposition is well understood by the courts, and ought to be equally well understood by lawyers, and supposedly by everyone else, that there is no power anywhere to prevent discussion or criticism, except so far as either that discussion or criticism may inflict a wrong and injury upon the right of another.

"The court is of the opinion that everybody knew, as the court knew, that there was no power to prohibit political discussion as such; that everybody understood that the only purpose of the committee in directing attention to those speeches was to show that in those speeches, in a subterranean way, statements were inserted for the purpose of practically saying to the hearers of the speakers, 'prosecute and continue this boycott against the Buck's Stove and Range Company.' That is the only theory upon which the speeches were offered or heard in evidence.

"How can we discriminate between a dozen men coming privately together in a room, and mutually counseling one another to prosecute a boycott, and the man standing in the open upon a platform and addressing hundreds and thousands in the same words, advising them and inciting them to prosecute a boycott? Is there any difference in principle?

"Mr. MITCHELL: I do not understand that that has been done.

"The COURT: That is the only theory upon which this prosecution ever stood."

And proceeding until his counsel, to a question of the court, said: "I do not think the court ought to put that question in that form.

"The COURT: The court has no question to propound to Mr. Mitchell to which he, either directly, himself, or through his counsel, interposes an objection.

"The court is desirous to afford to Mr. Mitchell the fullest and freest opportunity to express his innermost and sincere convictions upon the vital points upon which this proceeding was originally founded, and upon which it is now proceeding. If the testimony of other witnesses is to be accepted—that Mr. Mitchell was advised by counsel to disobey this order—that is the most dangerous and destructive view of the law that ever emanated from the mouth of counsel. The court is no more than undertaking to give him an opportunity to express not only his dissent from that advice, if he

162 feels it, or from any position in which either direct or indirect, or documentary or oral evidence may have placed him, or may have seemed to have placed him; only to evoke from him what may be his final and ultimate judgment upon the point, and the single point, whether the judicial tribunals of the land are to be despised and reviled, or their judgments respected and adhered to.

"In view of the objection, and in view of what the court has now responded in answer to the objection, it is entirely with Mr. Mitchell and his counsel whether he shall answer any further questions.

"Mr. MITCHELL: If your honor please, my choice is that I shall be either vindicated or condemned based upon the evidence now submitted in the case."

And then proceeded to its conclusion, the examination by counsel; and at the end:

"The COURT: Mr. Mitchell, the court strongly recommends that you consider again the propriety of acquainting the court, before these proceedings close, with your convictions whether you ought and whether you expect to lend adherence to the decrees of the judicial tribunals of the land, in matters committed by law to their jurisdiction and power.

"You are free, at any time before these proceedings close, to give expression to the court, either orally, or by written communication, upon this point. You need not make any response at this time.

"Mr. MITCHELL: May I ask, if I decide to make a statement, and it is made in writing, whether it will be made a part of the record?

"The COURT: If you so desire."

Some three weeks after was presented in open court and filed, the following in writing from Mr. Mitchell:

"John Mitchell, 3 Claremont Avenue.

"MOUNT VERNON, N. Y., February 17, 1912.

"Hon. Daniel Thew Wright, Associate Justice, Supreme Court of the District of Columbia, Washington, D. C.

"SIR: At the close of my cross-examination in the contempt proceedings instituted against Mr. Gompers, Mr. Morrison and me, the court stated that I was free, at any time before these proceedings close, to give expression to the court, either orally or in written communication, upon the subject of the following recommendation:

"The court strongly recommends that you consider again the propriety of acquainting the court, before these proceedings close, with your conviction whether you ought and whether you expect hereafter to lend adherence to the decrees of the judicial tribunals of the land in matters committed by law to their jurisdiction and power."

"I have given the court's recommendation careful thought and serious consideration, as a result of which I desire to say that I believe a statement by me that I 'expect hereafter to lend adherence to the decrees of the judicial tribunals of the land' would be subject

to no other interpretation than that I heretofore failed or refused to comply with the lawful decrees of the courts and that my evidence in this proceeding was not truthful and sincere and in keeping with the facts in the case. I am not willing to make any statement that would impugn my own testimony. I am not willing by any device or subterfuge to attempt to deceive the court or secure an acquittal by any means than those of the evidence and the truthfulness of my testimony.

"Indeed, I would feel more contentment if convicted, conscious of the rectitude of my course and the truthfulness of my evidence, than if acquitted on any other ground than the facts as they have been presented to the court, and the law as it has been enunciated by the higher tribunals.

Yours respectfully,

(Signed)

JOHN MITCHELL."

To the statement, "I am not willing by any device or subterfuge to attempt to deceive the court," is irrevocably tied, "I under oath, withheld from the court the information that I had not signed the 'Urgent Appeal.'" He was called upon only to affirm, "Hereafter I expect to lend adherence to the decrees of the judicial tribunals of the land, in matters committed by law to their jurisdiction and power;" only to declare that hereafter he would recognize the supremacy of law; and even this he declines to do. Departure from the cause of error is no right cause for even embarrassment, yet it is disdained. His course leaves what alternative for a court? Which is this, because of the power which these men conceive themselves to sway, defied in the face of the people to perform its functions against them, or to administer to them, without respect to persons, the justice of the land?

As above indicated, Morrison put into circulation the printed proceedings of the Norfolk convention and the American Federation containing violations of the injunction. Although born in Canada he is a naturalized citizen of the United States, having necessarily taken the oath of allegiance to the land of his adoption. He is also a member of the International Typographical Union, and as such took the obligation of the oath of that order, which he says he "helped to put in in our 1896 convention." That oath contains:

"I solemnly and sincerely swear * * * that my fidelity to the Union and my duty to the members thereof shall in no sense be interfered with by any allegiance that I may now or hereafter owe to any other organization, social, political or religious, secret or otherwise * * * to all of which I pledge my most sacred honor."

There was no need to violate the injunction and defy the order of the court, even had the defendants in good faith believed it to be erroneous. No personal concern of the defendants was involved in the controversy between the plaintiff and its employees. To drive it, its products, and its customers from the market was no legitimate affair of theirs. Had they in good faith been contending for a legal principle this, the law alone, through its ordained tribunals could establish and secure; and the orderly process of appeal from the in-

junction restraining the boycott, would have corrected it, had it been wrong, without their violation of it. If the statements that they desired by violating the injunction to make a test case for the determination of the Supreme Court of the United States were sincere, they would have laid before that court the merits of the main controversy after perfecting the appeal thereto instead of accomplishing a dismissal without a hearing, as they did.

163 It has been said that, as the adjustment of the controversy which was made with those who succeeded Mr. Van Cleave in the management of the plaintiff's business and the dismissal of the appeal by the Supreme Court of the United States puts the original controversy at an end, the court might justly modify the penalty which in the first contempt proceedings seemed to it necessary to impose; but with this view my judgment is unable to agree.

Although in the original contempt proceeding the Supreme Court of the United States declared the illegality of the boycott, and of the "We Don't Patronize" and 'Unfair' lists as its instrumentalities, yet the revolutionary force, vitalized and directed by the defendants, which overcame the law for the original case, and by which the law for that case was made to fail, has still prevailed. With respect to the powers and the processes of the court here concerning the case, it still prevails, over, above, and beyond the law. The defiant, unsubmitive attitude of the defendants to that power and to those processes continues at this moment as militant as before. Had either of them admitted his error, now ascertained by the Supreme Court of the United States, and avowed a readiness hereafter to respect and abide by the law of the land, and the judicial power of government, as established by the people, it might, perhaps, with justice be considered that the authority of this tribunal had to that extent been vindicated and at last established; but it has not yet been established since it was overthrown.

The requirements of society demand that power shall be confided. That it may be abused makes no argument against the need for its existence; for if it did, it would go as well to the destruction of all power, since there is none which may not be abused. Without it neither society nor government could be, for government is but the method of organized society for the expression of its concerted power.

It is of the utmost consequence to the peace and order of society that those controversies which arise amongst individuals shall be settled peaceably and quietly, and which, were there no peaceful arbiter, would lead incessantly to quarrels and bloodshed and be settled by the law of force.

It is the will of the people that there be judicial tribunals; the Constitution established by the people declares that there shall be such; their powers and functions are ordered by the law of the land. It is of the utmost concern to the people themselves, to whom these tribunals belong, that they should command the deference, respect and confidence of the community. Of the departments of the Government, the high functions of the executive and legislative are performed at a distance removed from the masses. The judi-

cial alone discharges its affairs amongst the very body of the people themselves, settling the disputes of inflamed and embittered disputants, in the midst of whom they hold their sessions, surrounded by whom they give their decisions; existing in the very vortex of the passions, which their judgments, however just, seldom serve to allay.

With no patronage to bestow, with no control over the purse or of the sword, they must depend for their support upon the confidence of the people in the rectitude of their decisions, and the convictions in the people of the necessity for their existence. That they shall enforce their own authority is of the utmost consequence, for if each disappointed litigant is with impunity to revile, traduce, and defy the tribunal appointed by the people to decide his controversy, to respect its judgments and decrees so far as they agree with his perverted or dangerous ambitions, but not beyond them, then all authority of those tribunals will soon be at its end; their usefulness will be destroyed, the purpose of their institution frustrated; and with their fall will fall the security of the people, and the authority of law itself.

It is an extremely dangerous and seditious view, to pretend that any power belonging to these tribunals exists, or is exercised for the establishment of the judges into a privileged order, or to set them up as those to whom a kind of personal command belongs. It is the expression of every judge who has been called upon to consider the subject, that the processes of contempt go only in the affairs of the tribunal; for the revilement of, or neglecting or transgressing the orders and decrees of the court as a court; or if of the judge, then only while acting as a judge in the discharge of judicial functions.

If the revilement or insult be but personal, not thus can it be punished or rebuked, although the person offended be a judge; only like other citizens can he proceed, by a personal action in which damages may be recovered; the which because of his attachment to judicial office he is conceived silently to forego, as a better kind of deportment; hopeful only of the ultimate justness of the people in their scrutiny of the conduct of the tribunal, for the final rejection of his calumniators.

The stability of the people's government depends upon the maintenance of the supremacy of law. Nightly they turn their faces homeward, no fear besetting them; without terror of inroad or invasion during times of absence. No visible hand is there as guardian, no physical power is nigh for a protector; yet all is safe; safe in the maintained supremacy of law; that mighty though intangible influence reigns and all is well; so long as it does reign, all will be well; but let it be dethroned, nay, let its supremacy be even doubtful—cupidity stirs unrestrained abroad; evil runs rampant; the vicious overthrow the virtuous; neither life, liberty, property, family, or home is safe; each one must turn his own defender, anarchy flourishes, and chaos reigns.

The first symptom of danger to the perpetuity of a condition of things or of any system or of any government is indifference to the influence which maintains the condition or the system in its current status. The first menace to the stability of the people's gov-

ernment will be found in a general indifference amongst the people to that power which maintains the supremacy of law throughout the land. While the importance of neither the executive nor the legislative department can be overestimated, yet in the especial function of maintaining the equality of persons and of rights, in maintaining alike the rights of not only the mighty but of the lowly as well, without respect to persons; and in so doing maintaining the supremacy of law over all other power howso arrogant or great, the importance of the judicial tribunals of the land is not only vital, but foremost, unparalleled and supreme.

If the people are taught to despise and deride the importance of their courts, they are taught as well to forget the functions of these tribunals, and to belittle the end for which they exist. This is to teach irreverence for law; indifference to the supremacy of law; indifference to that upon which depends the safety of their government, and of themselves. If these are to be preserved to the people, the supremacy of law alone can preserve them, and to that end must be maintained; maintained not only in the sense of being vindicated after violation, but maintained in the sense that a consciousness of the supremacy of law shall so pervade the very atmosphere as to restrain in advance those who are otherwise ready to be transgressors; thus preserving in advance whatever is worth protection. If the people are to continue in reverence for law, they can not be taught irreverence for the tribunals which maintain it.

It is for them, the people, that the authority which they have erected for these tribunals is to be preserved; it is for their welfare that by the judge that authority must be maintained, however much the calm of inactivity might more contribute to the measure of his tranquillity and repose. Responsibility is nowhere greater, no other obligation is so sacred as the responsibility of judges and their obligation to treasure and preserve the judicial power in the completeness confided by the people.

This duty lies nowhere in their preference, abides not in their choice, but rises out of that awesome trust to hold unshorn and unpolluted that power which throughout the land maintains the supremacy of law.

What is judicial power? To measure justice without respect to persons; to the rich and to the poor alike; that no man, however humble, need fear to be overborne by the weight or number of his adversaries; to preserve justice for the lowly; to impose it upon the great; to save it to the weak by requiring it from the mighty; one man against two millions, or two millions against one man, it is the same. Such are judicial powers and functions, than which none more sacred or majestic can come into the discharge of the creatures of God.

Who would have done with judges, is no man for law; but who defies the authority of these tribunals, affronts the majesty of the people.

The evidence shows for these respondents an assiduous and persistent effort to undermine the supremacy of law by undertaking insidiously to destroy the confidence of the people in the integrity

of the tribunals which maintain it; this by inoculating the minds of their following and the people with a virtue of mischievous falsehood and misrepresentation concerning the courts and judges, seeking and hopeful that thus the support of the people might be withdrawn from these tribunals, and by this means their power undone, their judgments rendered valueless and forceless.

To the startling but none the less deliberate end of erecting themselves into an autocracy from whose mischievous edicts no law could give redress and the land know no appeal.

Fairly summed up, the case is this. A citizen whose business was being unlawfully interfered with by these defendants asked this court to enjoin them from so doing; and this court, having jurisdiction of the parties and of the subject-matter, issued its injunction. That injunction the defendants refused to obey, claiming that they had a right to do what they were doing, although the point had been decided against them, and that the injunction in forbidding them to do the things complained of violated their constitutional rights to freely speak and freely print. Acting under this claim, they openly and constantly violated the injunction and defied the court. The case itself in which the injunction was issued was taken on appeal to the District Court of Appeals, where the injunction was modified in some of its terms, but otherwise affirmed and continued. Thereupon, an appeal was taken to the Supreme Court of the United States, but before argument thereon was reached, the case was settled by an agreement with a new management which had come into control of the plaintiff's affairs. In the meantime, the defendants had been called upon in this court to answer for violating the injunction. They were tried, found guilty and sentenced. On appeal to the District Court of Appeals, the decision and sentences were affirmed. On appeal to the Supreme Court of the United States, it was decided that the injunction did not violate the right of free speech or free press as claimed by the defendants, and that they had no right to disobey it, but that the proceedings in which they had been sentenced for their contempt were erroneous in form. Wherefore the case was sent back with leave to this court to renew proceedings against them in the form indicated by that opinion. Immediately such proceedings were begun. The defendants have been tried and found guilty. They have been reminded that the Supreme Court of the United States has decided that the injunction did not violate their constitutional rights, and that it was their duty to have obeyed it; and they have been called upon to say whether, in view of this decision of the highest tribunal in the land, they were prepared to acknowledge their error and to assure the court that they intended to obey such orders of the court in the future. This they have steadily refused to do. What then remains for the court? Can it omit to pass sentence without acknowledging that any defendant may with impunity refuse to obey its orders? And if its orders need not be obeyed, why should it issue any? And if it is not to issue orders why should it continue to exist? It is plain that we must either pass sentence or admit the extinction of the office which we hold. If the defendants by acknowledging their

error and assuring obedience in the future could have relieved the court of this necessity, this they have refused to do.

The defendants are here, at the court's bar, to answer; they have been afforded full opportunity to hear the evidence against them and say what, if any, reason can exist against their punishment. Every part of their response, for they offer no defense, is measured by the words of their leader, Gompers: "The things I am charged with, I did. * * * Go to — with your injunctions."

There is no room for temporizing; they are ready to repeat in equally determined fashion the sedition of the past; all assurance to the contrary they have themselves distinctly and definitely refused to give. Lawless as are their teachings, they still proclaim them; to them persistently adhere, and still incite the ill-disposed to follow.

In the meting out of the law's punishment, judicial tribunals are obligated to one principal concern—to make such example of offenders, in proportion to the gravity of their offenses, as will serve to deter others from offending in like manner; thus establishing in advance, so far as courts can, a universal consciousness that the supremacy of law so permeates the land as to restrain beforehand those who are otherwise ready to transgress.

Nothing does the law care for the imposition of penalty for the sake of afflicting him who must bear it; it is for the purpose of maintaining the supremacy of law and thus preserving orderly society and the personal rights of man, that object lessons must be made.

Where else does the history of jurisprudence show so bold, so broad, so effectual a contempt of the judicial arm of government as here? When before has an instance occurred where the power of established sovereignty was rendered forceless and the law for a case was made to fail in its effort to secure to an outraged citizen, the establishment and vindication of his rights?

While the court is ever cautious, ever reluctant to extend the punishment for contempt of its authority beyond the extreme already to be found in precedents, yet the court feels itself bound to administer to the chief offender here at least the extreme penalty which such established precedents contain.

That six months' imprisonment imposed for the violation of an injunction in *Debs* case (158 U. S., p. 564) served as no deterrent from defying court decrees is shown by the instances at bar, which well enough demonstrates that that penalty is insufficient admonition to those disposed to such offendings to take heed.

The contempt committed by the least of these offenders was more pernicious and malignant than that of *Debs*, in that it was an open and deliberate attack upon the foundations of society and of the law; and did indeed put down the law so that it did not operate; so that it did not protect; so that it failed to secure to a citizen his rights.

For the chief offender, the duty of the court, if it be measured by its obligation to administer the justice of the land "without respect to persons," requires it in determining a penalty appropriate for this, the most dangerous and destructive of contempts, at least

to parallel the penalty fixed by the good precedent of Savin's case (131 U. S., 267). He endeavored to deter a witness from testifying against a defendant in a criminal trial by approaching him about the witness room and hallway in the courthouse and offering him money. Although he did not succeed in corrupting the witness, he was found in contempt of court and sentenced by the United States District Court to imprisonment in the jail for one year. The rightness of this action was affirmed by the Supreme Court of the United States, when his case came thither.

Judged by that standard, how can a lesser punishment be inflicted here?

Illness prevented the Chief Justice from sitting at the hearing of this cause. All the rest of my associates listened to the arguments and have considered the record. By them I am authorized to announce that they concur in the conclusions the court has reached, in the reasons given to sustain them, and in the sentences about to be imposed.

The duty that devolves upon the court is not a pleasant duty. We should all have been glad if a different result could have been reached without doing violence to the truth, or abdicating the office that we fill. But when the law is to be vindicated, who, if not the judges of the law, are to attend to its vindication? Who shall defend the citadel if those who are appointed to defend, shall abandon or betray it?"

WRIGHT, *Justice*.

166

Decree.

Filed June 28, 1912.

* * * * *

The above proceeding coming on to be heard upon the Report of Joseph J. Darlington, Daniel Davenport and James M. Beck, appointed by the Court a committee to investigate and report to the Court whether or not the said Samuel Gompers had been guilty of contempt of this Court in wilfully violating the terms of the injunctions issued by this Court in the cause of the Buck's Stove & Range Company vs. American Federation of Labor, Samuel Gompers et al., No. 27305, Equity, and upon the answer of the respondent to the said report and to the rule to show cause issued thereunder, and upon the testimony taken in support of the allegations of the said report and of the said answer, and having been argued on behalf of the committee and by counsel for the respondent,

It is thereupon by the Court, this 28th day of June, A. D. 1912, upon consideration thereof, Adjudged: That the respondent Samuel Gompers is guilty of a contempt of this Court in wilfully violating the terms of the said injunctions; and it is thereupon further ordered and adjudged that the said Samuel Gompers be confined in the prison of the Washington Asylum and Jail for and during the period of twelve months, said imprisonment to take effect from and including the date of the arrival of the said respondent Samuel Gompers at said jail.

From the foregoing judgment, the respondent Samuel
167 Gompers prays an appeal to the Court of Appeals of the Dis-
trict of Columbia, which is allowed, and the penalty of the
appeal bond is fixed at One Hundred dollars, and the penalty of the
bail or appearance bond be, and the same hereby is, fixed at five
thousand dollars.

To the foregoing order and decree and to the several findings of
fact and law therein contained the defendant in open court then
and there objects and excepts.

WRIGHT, *Justice*.

Memorandum.

June 28, 1912.—Appeal bond for \$100 approved and filed.

Directions to Clerk for Preparation of Transcript of Record.

Filed July 1, 1912.

* * * * *

JULY 1, 1912.

Mr J. R. Young, Clerk Supreme Court of District of Columbia,
Washington, D. C.

SIR: An appeal having been taken, you will please prepare the
record and bill of exceptions for the Court of Appeals.
168 in Equity Cause No. 30180, In re Samuel Gompers, Frank
Morrison and John Mitchell, inserting in the record the
original order referring the cause to Mr. Justice Wright, order
appointing Committee, Report of Committee as to the several re-
spondents, and all pleas, replications, motions, petitions, affidavits,
orders, decrees and opinions in the cause, including, of course, the
abstract of testimony containing the formal bill of exceptions which
will be filed with you, and signed by the Court.

Very truly yours

RALSTON, SIDDOX & RICHARDSON,
By J. H. R.

J. H. R./I. C. K.

Assignments of Error.

Filed July 3, 1912.

* * * * *

The appellee and respondent above named, assigns for error in
the above entitled cause, the following:

1. The Court erred in overruling the motion to dismiss these
proceedings on the ground that the order of injunction alleged to
have been violated was not made by the Justice before whom this
proceeding was brought when he was a member of that branch of
the Supreme Court of the District of Columbia by which the order
was made, and was not, on the date of beginning these proceedings,

169 a member thereof, and that he had no jurisdiction or authority to proceed herein; and furthermore, that at the time the order certifying the cause to Mr. Justice Wright, was made, there was nothing pending in the case of the Buck's Stove and Range Company vs. Gompers et al., in the Equity Court, or the Supreme Court of the District of Columbia, and nothing to be certified, and that the trial, if at all, should have been had, in the first instance, by that branch of the Court against which a contempt was supposed to have been committed, as will more fully appear from the motion herein filed.

2. The Court erred in overruling the motion to quash these proceedings on the ground that they were criminal in their nature, these proceedings being brought in equity.

3. The Court erred in overruling the motion to set aside the report submitted herein by the Committee.

4. The Court erred in refusing to strike out the names of the Committee and substituting the name of the Attorney of the United States for the District of Columbia therefor, the said Committee having been biased by reason of their employment as attorneys for plaintiff in the suit of the Buck's Stove and Range Company against Samuel Gompers et al.

5. The Court erred in overruling, on July 24, 1911, the motion for bill of particulars filed herein.

6. The Court erred in overruling a motion to dismiss these proceedings, based upon the ground that no proper replication had been filed to the plea of the statute of limitations.

7. The Court erred in overruling the plea of the statute of limitations herein.

8. The Court erred in appointing a United States Commissioner for the purpose of taking testimony in this cause.

9. The Court erred in receiving improper testimony over the objection of the respondent as shown by the bill of exceptions herein.

10. The Court erred in excluding proper testimony offered on behalf of the respondent as shown by the bill of exceptions herein.

11. The Court erred in finding that there was any evidence tending to hold the respondent guilty of the charges made against him, or any of them.

12. The Court erred in finding the respondent guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

13. The Court erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by the respondent after December 23, 1907.

14. The Court erred in not finding that any charges against this respondent herein were barred by the statute of limitations.

15. The Court erred in finding the respondent guilty of the charges against him.

16. The Court erred in inflicting a criminal punishment when sitting otherwise as a Court in Equity.

ALTON B. PARKER,

RALSTON, SIDDON & RICHARDSON,

Attorneys for Respondent.

Service by copy acknowledged July 3, 1912.

171 *Additional Directions to Clerk for Preparation of Transcript of Record.*

Filed July 5, 1912.

* * * * *

In addition to the parts of the record designated by the respondents to be included in the transcript of record for appeal in the above cause kindly include the order upon the above respondent to show cause issued therein under date of the 26th day of June, 1911.

J. J. DARLINGTON,
For Committee.

To Jno. R. Young, Esq., Clerk Sup. Ct. D. C.

Order.

Filed July 5, 1912.

* * * * *

Upon motion of respondent's counsel the Committee not objecting, it is this 5th day of July, 1912.

Ordered, That the time for filing the transcript of record and bill of exceptions herein be and it is hereby extended to October 1, 1912.

WRIGHT, *Justice.*

172 *Supplemental Assignment of Error.*

Filed August 9, 1912.

* * * * *

The addition to the assignment of error filed in this cause on July 3d, 1912, the respondent hereby makes the following supplemental assignment.

17. "The court erred in imposing the punishment specified in its order and judgment in that the said punishment is cruel and unusual within the meaning and intent of the Constitution of the United States."

ALTON B. PARKER,
RALSTON, SIDDONSON & RICHARDSON,
Attorneys for Respondent.

173

Report of Committee.

Filed June 26, 1911.

In the Supreme Court of the District of Columbia.

Equity. No. 30180.

In re JOHN MITCHELL.

Proceeding in Contempt.

The undersigned, directed by the Court's order of May 16, 1911, to inquire whether the above named John Mitchell has been guilty of contempt in wilfully violating the terms of an injunction issued by the Court in the case of the Buck's Stove & Range Company vs. The American Federation of Labor, John Mitchell and others, defendants, No. 27,305, Equity, and, if yea, to file and present charges of such contempt of court to the end that its authority be established, vindicated and sustained, report that there is reasonable cause to believe that the said John Mitchell is guilty as aforesaid, and they accordingly present the following:

Heretofore, to wit, on the 18th day of December, 1907, this court, in said Equity cause No. 27,305, granted an injunction pendente lite against the said American Federation of Labor, John Mitchell and others, a copy whereof is hereto annexed, marked Exhibit "A," and made a part hereof, wherein and whereby the said John Mitchell, together with the other defendants in the said equity cause therein named, were restrained and enjoined from conspiring or combining in any manner to restrain, obstruct, or destroy the business of the Buck's Stove & Range Company, complainant in said equity cause, or to prevent it from carrying on its business without interference from them or any of them, from interfering in any manner with the sale of the product of its factory or business, from declaring or threatening any boycott against it, its business, or its product, from printing, issuing, publishing or distributing through the mails or in any other manner any copy or copies of the American Federationist, or any other written or printed newspapers, magazine, circular, letter or other document or instrument whatsoever which should contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize" or the "Unfair" list of the said defendants, or any of them, or containing any reference to the complainant, its business or its product, in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement or notice, of any kind or character whatsoever, calling attention to the complainant's customers, or of dealers or trade-men, or the public, to any boycott against the complainant, its business

or its product, or that the same were or had been declared to be "Unfair," and from making any representation or statement of like effect or import, for the purpose of or tending to any injury to or to interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm or corporation, or the public, not to purchase, use, buy, trade or deal in stoves, ranges, heating apparatus or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in the complainant's product, either directly

175 or through orders, directions or suggestions to committees, associations, officers, agents or others for the performance of any such acts or threats, and from in any manner whatsoever impeding, obstructing, interfering with or restraining complainant's business, trade or commerce, in the State of Missouri, or in other States and Territories of the United States, or elsewhere where-soever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid; which injunction thereafter, namely, on the 23d day of December, 1907, became technically operative by the filing by the complainant in said equity cause of an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitably suing out the injunction, as provided in and by the said order of injunction and in conformity with the rules of this court.

The said decree of injunction pendente lite was followed by a final decree against the said American Federation of Labor John Mitchell and others, passed on the 23d day of March, 1908, perpetually restraining and enjoining the said defendants from doing any of the said acts or things so prohibited by the said decree of December 18, 1907, a copy of which final decree is herewith filed, marked Exhibit "B" and made a part hereof.

There is reasonable cause to believe, and it is hereby charged, that the said John Mitchell was guilty of contempt in wilfully violating the terms of the said injunction in the following particulars:

I. On or about the 24th day of January, 1908, the said

176 John Mitchell, was one of the Vice-Presidents of the American Federation of Labor and one of the members of its Executive Council, and did wilfully unite with Samuel Gompers, Frank Morrison and others in printing and widely circulating a large number, to wit, several thousands of copies of a paper designated by them an "Urgent Appeal for Financial Aid in Defense of Free Press and Free Speech," and, also, caused the same to be printed in the February, 1908, American Federationist, which "Urgent Appeal," among other things, contained the following language, as he, John Mitchell, at the time well knew:

"To All Organized Labor, Greeting:

"Justice Gould, of the Supreme Court of the District of Columbia, has issued an injunction against the American Federation of Labor and its officers, officially and individually,

"The injunction invades the liberty of the press, the liberty of speech.

"It enjoins the American Federation of Labor, or its officers, from printing, writing, or orally communicating the fact that the Buck's Stove and Range Company has assumed an attitude of hostility toward labor, and that organized labor has made this fact known, and asks our friends to use their influence and purchasing power with a view of bringing about an adjustment of all matters in controversy between that company and organized labor. The injunction is of the most sweeping character, and it, as well as the suit in connection therewith, must of necessity be contested in the courts, though it reach the highest judicial tribunal of our country.

"With this is a re-print of an editorial from the February, 1908, American Federationist, entitled 'Free Press, Free Speech, Invaded by Injunction against A. F. of L.—A Review and Protest.' The editorial contains a full presentation of labor's position in regard to this injunction."

That the said John Mitchell wilfully caused and assisted in causing to be circulated in connection with the said "Urgent Appeal," and as a part thereof, thousands of copies of a re-print of an editorial in the said February, 1908, American Federationist, which said editorial contained, among other things, the following language, as he then knew:

"Justice Gould, of the Supreme Court of the District of Columbia, issued an injunction, on December 18, 1907, against the American Federation of Labor and its officers, and all persons within the jurisdiction of the court.

"This injunction enjoined them as officers, or as individuals, from any reference whatsoever to the Buck's Stove and Range Company's relations to organized labor, to the fact that the said Company is regarded as unfair; that it is on an 'Unfair' list, or on the 'We Don't Patronize' list of the American Federation of Labor. The injunction orders that the facts in controversy between the Buck's Stove and Range Company and organized labor must not be referred to, either by printed or written word or orally. The American Federation of Labor and its officers are each and severally named in the injunction. This injunction is the most sweeping ever issued.

"It is an invasion of the liberty of the press and the right of free speech.

"On account of its invasion of these two fundamental liberties, this injunction should be seriously considered by every citizen of our country.

* * * * *

178 "With all due respect to the court, it is impossible for us to see how we can comply with all the terms of this injunction. We would not be performing our duty to labor and to the public without discussion of this injunction. A great principle is at stake. Our forefathers sacrificed even life in order that these fundamental constitutional rights of free press and free speech

might be forever guaranteed to our people. We would be recreant to our duty did we not do all in our power to point out to the people the serious invasion of their liberties which has taken place. That this has been done by judge-made injunction and not by statute law makes the menace all the greater.

* * * * *

"The publication of the Buck's Stove and Range Co. on the 'We Don't-Patronize' list of the American Federation of Labor is the exercise of a plain right. To enjoin its publication is to invade and deny the freedom of the press—a right which is guaranteed under our constitution.

* * * * *

"The matter of attempting to suppress the boycott of the Buck's Stove and Range Co., by injunction, while important, yet pales into insignificance before this invasion and denial of constitutional rights.

* * * * *

"The members of organized labor are not themselves obliged to refrain from dealing with the firms on the 'We Don't Patronize' list of the American Federation of Labor. The information is given them. There is no compulsion. They are entirely free to use their own judgment.

* * * * *

179 "No persons can be compelled to buy an article. If the purchaser chooses to let alone certain products for any reason, or for no reason, there is no way of compelling him to buy.

"This injunction can not compel union men or their friends to buy the Buck's Stoves and Ranges. For this reason the injunction will fail to bolster up the business of this firm which it claims is so swiftly declining.

"Individuals as members of organized labor will still exercise the right to buy or not to buy the Buck's stoves and ranges. It is an exemplification of the saying that: 'You can lead a horse to water but you can't make him drink,' and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not to purchase the Buck's stoves and ranges.

"It may not be amiss here to say that in all these proceedings, whether before the court or in the contest forced upon labor by the Buck's Stove and Range Co., no element of personal malice or ill-will enters. Labor is earnestly desirous of entering into friendly relations with employers, and this is none the less true of its desire to reach an honorable adjustment and agreement with the Buck's Stove and Range Co. So long, however, as that company continues in its hostile attitude to labor, denying it the right to organize, discriminates against union members, and refuses to accord conditions of employment generally regarded as fair in the trade, it must expect retaliatory measures; these measures always, however, within

the law and for the purpose of ultimately reaching an honorable, mutually advantageous agreement.

"The publication of the Buck's Stove and Range Co. on the 'We Don't Patronize' list of the American Federation of Labor 180 is only an incident in the history of the case. These stoves might have been let as severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing that firm from the list against which we primarily protest, it is this injunction invading the freedom of the press.

"Justice Gould, in one portion of his opinion, says: 'Defendants (the American Federation of Labor) have the right either individually or collectively to sell their labor to whom they please, on such terms as they please, and to DECLINE TO BUY PLAINTIFF'S STOVES; THEY HAVE ALSO THE RIGHT TO DECLINE TO TRAFFIC WITH DEALERS WHO HANDLE PLAINTIFF'S STOVES.' (Heavy type and brackets are ours.)

"Here he states precisely the whole case of the American Federation of Labor. This is what we have done. This is the sum total of labor's offending. The publication of the Buck's Stove and Range Co. and other firms on the 'We Don't Patronize' list is merely giving truthful information at the request of our members as to whether or not certain firms employ union men and concede the other conditions of employment usually granted by those concerns which recognize union labor.

"It would seem that having made the above-quoted statement, Justice Gould would have found in it the reason for a refusal to issue the injunction. He, however, goes on to assume that there has been some unwarrantable interference with the plaintiff's business, though neither in his opinion nor in the injunction itself does he make it clear how he arrived at the conclusion that the union course was any other than as indicated in his own language."

181 II. That, one of the counsel for the complainant in the said equity cause having given an opinion, which had been published, that, while the power of the Supreme Court of the District of Columbia to punish for contempt of court was limited to such persons as it might at any time find within the territorial limits of the District of Columbia, the decree was binding upon all persons comprised within its terms, wherever they might reside, and that it was a criminal offense under the Statutes of the United States, punishable by imprisonment in the penitentiary, for any two or more persons anywhere in the United States to conspire together to evade or defeat the decree by doing any of the acts prohibited by it, and that such persons were liable to prosecution therefor by the Federal authorities; and the said Gompers having in the February, 1908, issue of the American Federationist prefixed, in large type, to a copy of the injunction of December 18, 1907, an editorial in the following language:

"Order Granting Injunction.

"In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove and Range Company

declares that punishment for violation of the injunction issued by Justice Gould against the American Federation of Labor applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation

182 of Labor assure us that this construction of the court's order is accurate;"—the said John Mitchell, with full knowledge of its contents as above set forth, wilfully caused and assisted in causing thousands of copies of a reprint of the said editorial to be widely circulated throughout the various States and Territories of the United States, in conjunction with the said "Urgent Appeal" hereinbefore referred to, for the purpose of suggesting to the two million members of the American Federation of Labor, and all persons in sympathy with them, that they might violate the said injunction of the court, and might defeat its object and purpose, without danger of punishment provided they were not, and should not come, within the territorial limits of the District of Columbia.

III. On or about the 25th day of January, 1908, while the said injunction of December 18, 1907, was in full force, effect and operation, the said John Mitchell presided, as its President, over the annual Convention of the United Mine Workers of America, which was and is one of the affiliated or constituent labor organizations associated with and comprising the American Federation of Labor, and, as its presiding officer, wilfully entertained, put to a vote, and declared to have been adopted, a resolution as follows:

"Whereas, The Buck's Stove and Range Company, of St. Louis, Mo., have taken legal steps to prevent organized labor in general, and the officers and executive committee of the A. F. of L., in particular, from advertising the above named firm as being on the 'Unfair' or 'We Don't Patronize' list, and

183 "Whereas, By the issue of such an injunction or restraining order as prayed for by the above named firm, organized labor will be deprived of one of its most effective weapons, and

"Whereas, J. W. Van Cleave, the president of above named firm, also president of the National Manufacturers' Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"Resolved, That the U. M. W. of A., in Nineteenth Annual Convention assembled, place the Buck's Stoves and Ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above make be fined \$5.00, and failing to pay the same be expelled from the organization."

With respect to the said resolution, the said John Mitchell alleged in the said equity cause that he did not recall anything about the introduction or passage thereof, but that he did not doubt that he was in the chair when the said resolution was put and declared to be adopted, or that it was read in his presence, and that, although

he did not remember hearing it, he had no doubt that he did hear it.

In an address delivered by the said John Mitchell before the Convention of United Mine Workers at Indianapolis on January 22, 1909, and subsequently repeated in the United Mine Workers' Journal of January 28, 1909, which Journal is the official organ of that organization, he used the following language in reference to his connection with the passage of the said resolution:

"The court says further that I presided as President of the United Mine Workers at a convention here in which a resolution
184 was passed violating that injunction. There are no doubt in this Convention hundreds of delegates who were here a year ago who know that I had no knowledge that the resolution was to be introduced. They know I had nothing to do with its preparation, with its consideration, or its introduction. It came to us as all other resolutions did. As chairman, what was I to do? I had, it is true, three alternatives. I might have resigned the Presidency of the United Mine Workers of America; I might have been cowardly and called some one else to the chair and let him accept the responsibility—asked some one else to accept the responsibility of what I dared not do myself; or I might have accepted the last alternative. I might have stood up before you, and advocated the cause of a company which was having trouble with its employees. Does the man who respects me least imagine for a moment I would become the advocate and defender of a company that was at variance with its employees? Would I stand here and fight the cause of a corporation that was trying to destroy the unions in its employment? What could I do? What could any self-respecting man do? Would he not have done as I did?

"It is true that, technically, I was guilty of violating the injunction when I presided over the meeting that adopted this resolution, but I am no more guilty than any other man who was present in the convention at that time. Indeed, I presume that before a jury I would be considered less guilty, because I did not vote for it, and every one else did. I did not vote for it because I was presiding."

Each and every of the foregoing publications, statements and acts of the said John Mitchell was in wilful violation of the injunction decree of this court in the said equity cause of the
185 Buck's Stove & Range Company vs. The American Federation of Labor, John Mitchell and others, No. 27,305, was done for the purpose of inducing others to disregard and violate the injunction of this court, and thereby to defeat it, and, in each of the said publications, statements and acts, the said John Mitchell is guilty of contempt of the court, and has subjected himself to due punishment therefor.

As in the case of Samuel Gompers, the said John Mitchell alleged, and it may be, although gravely in error, he then believed, that the injunction was not binding upon him because of what he claimed to be his constitutional right of free speech and a free press; and it may be, now that this contention upon his part, always indefensible, has been determined by the Supreme Court of the United States to

be unfounded, he may be prepared to make such due acknowledgment, apology and assurance of future submission to the Court as may meet the necessary purpose of vindicating its authority, and that of the law. Should such acknowledgment, apology and submission not be forthcoming, after due notice and opportunity, the course necessary to be pursued to maintain its dignity, and due respect for and obedience to the law, is respectfully submitted to the Court for its consideration.

JOSEPH J. DARLINGTON,
DAN'L DAVENPORT,
JAMES M. BECK,

Committee.

186 DISTRICT OF COLUMBIA, ss:

I, Daniel Davenport, on oath say that I have read the foregoing Report signed by Joseph J. Darlington, James M. Beck, and myself, Committee, and know the contents thereof; that this affidavit is made by me on behalf of the said Joseph J. Darlington and James M. Beck, as well as on my own behalf, because of the fact that the said matters and things in the said Report set forth are more largely within my personal knowledge; that the matters and things set forth in the said Report as of personal knowledge are true, and that those set forth upon information and belief I believe to be true.

DAN'L DAVENPORT.

Subscribed and sworn to before me this 24th day of June, A. D. 1911.

[SEAL.]

IRWIN H. LINTON,
Notary Public, D. C.

EXHIBIT "A."

In the Supreme Court of the District of Columbia.

Equity. No. 27305.

THE BUCK'S STOVE AND RANGE COMPANY
VS.

THE AMERICAN FEDERATION OF LABOR et al.

This cause coming on to be heard upon the petition of the complainant for an injunction pendente lite as prayed in the bill, and the defendants' return to the rule to show cause issued upon the said petition having been argued by the solicitors for the
187 respective parties, and duly considered, it is thereupon by the court, this 18th day of December, A. D. 1907, Ordered that the defendants The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Doppe, Arthur J. Williams,

Samuel R. Cooper and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails or in any other manner, any copies or copy of the American Federationist, or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize"

188. or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention of complainant's customers, or of dealers, or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling, or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade

189. or commerce, whether in the State of Missouri, or in other states and territories of the United States, or elsewhere where-soever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid.

And it is further Ordered by the court that this order shall be in full force, obligatory and binding upon the said defendants, and each of them, and their said officers, members, agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them, upon the service of a copy hereof upon them or their solicitors or solicitor of record in this cause; provided the complainant shall first execute and file in this cause, with surety or sureties to be approved by the court or one of the justices thereof, an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitable suing out this injunction, and stipulating that the damages may be ascertained in such manner as the justice of this court shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

ASHLEY M. GOULD, *Justice*.

EXHIBIT "B."

Decree.

Filed March 23, 1908.

In the Supreme Court of the District of Columbia.

No. 27305. Equity.

190

BUCK'S STOVE & RANGE COMPANY

vs.

THE AMERICAN FEDERATION OF LABOR et al.

The above entitled cause coming on at this time for final hearing, and having been submitted to the court by the respective parties, through their solicitors, upon the pleadings and the evidence, and having been duly considered, it is thereupon by the court this 23rd day of March, A. D. 1908, adjudged, ordered and decreed that the defendants The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, perpetually restrained and enjoined from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm or corporation, and from declaring or

threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing or distributing through the mails, or in any other manner, any copies or copy of the American Federationist, or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize" or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, or word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement or notice of any kind or character whatsoever, calling attention to the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "Unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening, or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other states and territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid. And it is further adjudged, ordered and decreed that the complainant recover against the defendants the costs of this suit, to be taxed by the clerk, and that it have execution therefor as at law.

HARRY M. CLABAUGH,

Chief Justice.

Rule to Show Cause.

Filed June 26, 1911.

* * * * *

Upon consideration of the report, this day filed, of Joseph J. Darlington, Daniel Davenport and James M. Beck, the Committee appointed by the court's order of May 16th, 1911, to inquire whether the above named John Mitchell has been guilty of contempt in wilfully violating the terms of the injunctions issued by this court in the cause of the Buck's Stove and Range Company vs. The American Federation of Labor, John Mitchell et al., No. 27305 Equity, and upon consideration of the charges of contempt filed therewith, it is thereupon by the court, this 26th day of 193 June, A. D. 1911, ordered that the above named John Mitchell show cause on or before the 17th day of July, 1911, at 10 o'clock a. m. in Equity Court No. 1, provided a copy of this rule and of said charges shall be served on him on or before the 6th day of July, 1911, why he should not be adjudged to be in contempt of the orders and decrees of the court in the said equity cause, and be punished for the same.

WRIGHT, *Justice*.*Marshal's Return.*

Served copy of within rule to show cause on John Mitchell by service on Ralston, Siddons & Richardson, attorneys for said Mitchell, as per their acceptance of same.

July 7, 1911.

AULICK PALMER, *Marshal*,
S.*Motion to Dismiss for Want of Jurisdiction.*

Filed July 17, 1911.

* * * * *

Now comes John Mitchell by Alton B. Parker, Ralston, Siddons and Richardson, his attorneys, and moves the Court that this proceeding be dismissed, and for cause says that the order of injunction which is alleged to have been violated by this defendant was not made by Justice Wright, before whom this proceeding is brought, that the said Justice Wright was not when the said order was made a member of that branch of the Supreme Court of the District of Columbia by which the said order was made, and is not now a member thereof, and that the said Justice Wright has no jurisdiction or authority to preside over this proceeding, and that this proceeding is not properly before the said Justice Wright.

ALTON B. PARKER,

RALSTON, SIDDONS & RICHARDSON,

Attorneys for the Defendant John Mitchell.

Dated July 17, 1911.

194

Motion for Bill of Particulars.

Filed July 17, 1911.

* * * * *

Now comes the respondent by Alton B. Parker, and Ralston, Siddons and Richardson, his attorneys, and moves the court for a Bill of Particulars of the alleged contempts charged against him, and prays that the complainant committee may be required to furnish the details of their complaint as follows:

Under Paragraph I.

The dates when, the places where and the persons to whom the respondent John Mitchell circulated copies of a paper designated an "Urgent Appeal for Financial Aid," etc., and when he caused the same to be printed as therein charged, or circulated the editorial therein mentioned.

Under Paragraph II.

The dates when, the places where and the persons to whom the respondent John Mitchell circulated copies of the paper designated an "Urgent Appeal for Financial Aid," etc.

The dates when, the places where and the persons to whom the respondent Mitchell caused to be circulated in connection with said "Urgent Appeal" copies of the reprint of the editorial in the February, 1908, Federationist, referred to in said paragraph.

The dates when, the places where and the persons to whom the respondent John Mitchell caused or assisted in causing copies of a reprint of the editorial referred to in said Paragraph, to be circulated.

RALSTON, SIDDON & RICHARDSON,*Attorneys for John Mitchell.*

195 DISTRICT OF COLUMBIA, ss:

John Mitchell, being first duly sworn, on oath says that he is a respondent in the above entitled cause; that he has carefully read so much of the report as has been served upon him; that he is charged therein in vague terms, and to unknown persons and at unspecified times with contempt of the order of the court; that he is unable properly to plead herein unless the charges be made definite as above moved; that unless so made definite, he will be unable on trial to present in many, if not all, instances, controverting testimony.

That he had no association with said publications and has no knowledge of having taken part in the publication or circulation of any of them.

JOHN MITCHELL.

Subscribed and sworn to before me, this 17th day of July, A. D. 1911.

J. R. YOUNG, Clerk,**E. J. McKEE, Ass't Clk.**

Motion to Set Aside Report.

Filed July 17, 1911.

* * * * *

Now comes John Mitchell, by Alton B. Parker, Ralston, Siddons and Richardson, his attorneys, and moves the Court to set aside the report herein submitted by Messrs. Daniel Davenport, J. J.

Darlington and James M. Beck, Committee, and for cause 196 says that the order referring the cause to said Committee called for the exercise of judicial discretion, and that no one of said Committee was in a position to exercise the same, and did not exercise it; that every one had repeatedly, and prior to his appointment, expressed in positive terms his conviction of the guilt of the respondents of the charges which they formulated subsequently against them; that as evidence thereof, he attaches hereto and makes part hereof and marks Exhibit "A", a few from among many citations which might be made from the stenographic report of proceedings in the contempt case of Buck's Stove and Range Co. vs. Gompers, et al., showing expressions of opinion by said Committee.

Moreover the members of the said Committee while appearing on the record for the Buck's Stove and Range Company in the suit out of which these proceedings grow, were in fact employed by and paid by the American Anti-Boycott Association and the National Manufacturers Association. The settlement, therefore, between the Buck's Stove and Range Company and the American Federation of Labor and Messrs. Gompers, Mitchell and Morrison, did not set them free from the legal and moral obligation to carry on the persecution for the benefit of the National Associations compensating them; thence their action was not and could not be judicial. These facts we offer and expect to prove by Mr. Davenport and other members of the Committee.

JOHN MITCHELL.

DISTRICT OF COLUMBIA, ss:

John Mitchell, being first duly sworn, on oath says that he has read the foregoing motion and exhibit by him subscribed, and knows the contents thereof, that the same are true of his 197 own knowledge, except as to the matters therein stated on information and belief, and that as to the same, he believes them to be true.

JOHN MITCHELL.

Subscribed and sworn to before me this 17th day of July A. D. 1911.

J. R. YOUNG, *Clk.*
By E. J. McKEE, *Ass't Clk.*

EXHIBIT "A."

In Argument before Justice Gould, September 9, 1908, on rule as to contempt.

Mr. Davenport on page 14 of Record Says:

"A gentleman, it appears, like to have Your Honor believe that he was in a comatoes state when that rank defiance of this Court and insult to this Court was committed in his presence and through this instrument."

This statement has reference to Mr. Mitchell. Mr. Darlington in presenting contempt case before Judge Wright, November 16, 1908, after reading verbatim the injunction at page 6 of the record, says:

"That sounds like a good deal of detail; and yet the present condition of the case shows that none of the details were superfluous. Everyone of those details has been violated, as we claim, and it is practically undisputed in the case."

Pages 100 and 101, "As I say, so far as the facts are concerned, the mere statement of them, it seems to me, appears to be conclusive, that we have had here the most deliberate, persistent, defiant contempt of an order of the Court which the records of judicial proceedings will point us to, or which could be imagined."

Mr. Beck in presenting contempt case on November 16, 1908, at page 157 of the record says:

"I am not going, because your Honor has been most patient in this case, in any detail unto the testimony in the case; because I have a reasonable confidence that having read the injunction your Honor can, from the answer of these respondents alone, pass to judgment that they are guilty and flagrantly guilty of the contempt wherewith they are charged."

Page 158, "Because while of course the question of what judgment shall be pronounced by the Court is wholly for the Court, it seems to me that the Court is entitled to the views of Counsel as to whether this is a case where men have gone ahead under a mistaken sense of right under circumstances that palliate while they do not wholly excuse, or whether it be not the fact that here is a clear, conceded, flagrant, deliberate, avowed defiance of the order of this Court as well as a deliberate insult to its authority."

Page 165, "Unfortunately, as far as I can see, no such view is possible; because in this case, before ever Judge Gould pronounced his injunction, there was a deliberate, avowed statement of these men, notably of Mr. Gompers and Mr. Mitchell, that if any injunction were issued against the boycott they would not obey it. In other words, they asserted their rights to defy the decrees of a Court of this country, and they would take the consequence if need be."

Page 166, "First let me take the gentleman who, when he goes to New York and meets with the Civic Federation and other distinguished philanthropists, is always a law-abiding citizen, and who, when with his own organization, is never law-abiding—
199 Mr. John Mitchell."

Page 179. "While the application for the injunction was pending Mr. Gompers took another very important public occasion to breathe his defiance to the action of this Court, which he clearly anticipated was about to be made."

Page 180. "Of course I might here interject the remark that that which he has said is in the highest degree both libelous and seditious; and although his qualification is not needed for the assertion of our rights to our injunction, yet if the action of himself and his associates is not deliberate sedition, then I do not understand the meaning of the word 'sedition.'"

Page 182. "There is the deliberate statement that no matter what the injunction might be, they would have an absolute right to go ahead and disregard it. If that is not pretty near sedition, just as much as the action of the State of South Carolina in nullifying the Federal Constitution, I do not understand what sedition is. And I am not at all sure that the sedition of the "master of a million minds," in this intangible and subterranean way, is not a great deal more dangerous than an armed revolt. An armed revolt you can put down; but the subterranean working of this conspiracy is, to some extent, and perhaps to a very considerable extent, beyond even the remedial power of the Courts."

Page 183. "The result was he resorted to perjury—flat perjury. In fact, this record is slimy—it is trailed over with the slime of perjury. That is a pretty harsh term, but it is true. They commenced with perjury; they filed an answer in this Court in which

they stated that they had not since the suit was brought put 200 the Buck's Stove & Range Company on the 'unfair' list, and they had no intention to do it. And yet the very numbers, the October and November, was it not, and December numbers—All three of them had the unfair list."

Page 191. "He allowed those thousand copies to go all through the country; and in that way, by passive action, he violated the injunction as to those copies."

Page 193. "And therefore I think it is a fair argument that if Mr. Gompers, in anticipation of our entering in the bond, did that which made the injunction inoperative by consequences which, occurring after the bond was entered, had their original causation in Gompers' acts before the bond was entered, he committed a contempt of Court."

Page 209. "And that resolution surpasses all previous attempts (unless I except Mr. Gompers' profane expression) to insult this Court and to affront its dignity; because, instead of simply stating: "We are going to keep up the boycott," it deliberately draws the issue between this Court and this self constituted Court of labor."

Motion to Set Aside Return of Service.

Filed July 17, 1911.

* * * * *

Now comes the respondent, John Mitchell, and moves to set aside the return of service upon him as being insufficient under the terms

of the rule, and for cause says that there has not been served upon him any copy of charges shown to have been verified, nor of exhibits made part thereof.

JOHN MITCHELL,
By RALSTON, SIDDON &
RICHARDSON,
His Attorneys.

201 DISTRICT OF COLUMBIA, ss:

Jackson H. Ralston, being first duly sworn, on oath deposes and says that he is one of the attorneys for John Mitchell, respondent to the rule in the above entitled cause, and member of the firm of Ralston, Siddons and Richardson; that on July 7, 1911, there was served upon him copy of a rule directed against John Mitchell, and there was also served in connection therewith a copy of an unverified report, no exhibits being attached thereto; that acknowledgment of such service was made by him in the following form:

"Service of the within by copy acknowledged as if served on John Mitchell this 7th day of July, 1911.

RALSTON, SIDDON &
RICHARDSON,
Att'ys for John Mitchell."

That on July 13th, he went to the Court House, and examined the proceedings in the case and found that the report of the Committee, service of which had been had, was verified, and that there were attached thereto sundry exhibits, which were made part of the report. That there has never been served upon him, and he has never acknowledged service for John Mitchell, of any verified report or of any exhibits attached thereto, and no such service had upon or acknowledged by any member of his firm, or had, as he is informed, upon John Mitchell himself.

JACKSON H. RALSTON.

Subscribed and sworn to before me this 17th day of July, A. D. 1911.

J. R. YOUNG, *Cpk.*
By E. J. McKEE, *Ass't Cpk.*

202 *Affidavit Opposing Motion for Bill of Particulars.*

Filed July 24, 1911.

* * * * *

DISTRICT OF COLUMBIA, ss:

I, Daniel Davenport, on oath say that, as will appear from inspection of a copy of the circular designated an "Urgent Appeal for Financial Aid," referred to in respondent's motion for bill of particulars, which copy is filed as Exhibit A. H. No. 2 with the depo-

sition of Frank Morrison in the original contempt proceeding in Equity Cause No. 27,305 in the Supreme Court of the District of Columbia, hereby made a part of this affidavit, the said circular was published over the signatures of the Executive Council of the American Federation, including that of the respondent John Mitchell, and that there was appended thereto, as Exhibit 3, the editorial from the February, 1908, American Federationist, also referred to in the said motion for a bill of particulars; that, in his answer to the petition filed in said Equity Cause by the Buck's Stove & Range Company for the issuance of a rule against respondent to show cause why he should not be punished for contempt of the injunctions of this Court in said cause, which petition specifically charged that Samuel Gompers, Frank Morrison and John Mitchell published the said "Urgent Appeal" in the February, 1908, number of the American Federationist, the respondent John Mitchell, under oath, denied neither the publication of the said "Urgent Appeal" or of the said editorial, nor his participation therein, but, on the contrary,

203 averred that he believed the action of the court to be erroneous, and that the underlying principle of its decision was to be found in an erroneous conception of right, and that, admitting the publication of the re-print of the said editorial contained in the February, 1908, American Federationist, he believed the statement of law contained therein was correct, and that it was published for the better understanding of the officials of the American Federation of Labor, "who were entitled to know, as definitely as they might, to what extent they were affected by the order of court passed in the District of Columbia." The said circular shows, on its face, that it was designed for circulation among a large number of persons, referred to in it as "Organized Labor." Pursuant to the said design, as was testified to by the said Frank Morrison in the said Equity Cause, between 25,000 and 28,000 copies of the said circular were distributed under his direction among the various labor organizations of the country; that, as this affiant is informed and believes, and therefore avers, the respondent and the said Frank Morrison are, still, members of the Executive Council of the American Federation of Labor, and, if particulars as to the dates when, the places where, and the persons to whom, the said 25,000 or more copies of the said "Urgent Appeal" and of the said editorial were circulated by his said associate in the transaction are material, the said particulars are more readily accessible to the respondent through his said associate than they are or can be to the Committee appointed by the Court to prosecute the charges of contempt against the said respondent.

I further on oath say that, at the November, 1908, Convention of the American Federation of Labor, the Executive Council of the said Federation, of which the respondent was a member, submitted a report, which was signed by the said John Mitchell, in which
204 report it is distinctly stated that they had issued the said Appeal.

DANIEL DAVENPORT.

Subscribed and sworn to before me this 24th day of July, A. D. 1911.

J. R. YOUNG, *Clk.*
By F. E. CUNNINGHAM, *Ass't Clk.*

Affidavit.

Filed July 24, 1911.

* * * * *

DISTRICT OF COLUMBIA, ss:

I, Daniel Davenport, on oath say that I am, and for the past eight years have been, employed by the American Anti-Boycott Association as its counsel, and that in that capacity I was employed by it to assist in the presentation of the suit of the Buck's Stove & Range Company for injunction against the American Federation of Labor, et al., in Equity Cause No. 27,305 in the Supreme Court of the District of Columbia, but that my connection with that controversy, and that of the American Anti-Boycott Association according to my best knowledge, information and belief terminated with the decision in that litigation by the Supreme Court of the United States at its October, 1910, term, and that I neither have, nor have had, any interest or connection whatsoever with the pending proceedings in contempt against the above named respondent other than such as has devolved upon me by my appointment under the order of this Court bearing date the 16th day of May, A. D. 1911, 205 as a member of a Committee to ascertain and report to the court whether there was reasonable cause to believe respondent guilty of contempt in the premises, and, in that event, to formulate and prosecute charges of contempt against him. I further on oath say that I am not, and never was, counsel for the National Manufacturers' Association, in any matter whatsoever, and, with respect to the Buck's Stove & Range Company litigation, that I have never been employed by it for any service, or in any way in connection therewith.

So far from maintaining any hostile bias or prejudice against the respondent, I shall be more than pleased by such acknowledgment by him of his error in disobeying the injunctions of the court, and by such assurance of his submission to the orders and decrees of the court in the future, as in the judgment of the court may be a sufficient vindication of its authority and of the majesty of the law, and may render unnecessary the further prosecution of respondent because of his said disobedience. I am more than willing to be relieved of the duty of prosecuting the said charges, by the substitution of some other member of the Bar in my stead for that purpose, if the Answer of the respondent shall render further prosecution necessary, and it shall be agreeable to the court to make such substitution.

DANIEL DAVENPORT.

Subscribed and sworn to before me this 24th day of July, A. D. 1911.

J. R. YOUNG, *Clk.*
By F. E. CUNNINGHAM, *Ass't Clk.*

206

Affidavit.

Filed July 24, 1911

* * * * *

DISTRICT OF COLUMBIA, ss:

I, Joseph J. Darlington, with reference to a certain affidavit of the above respondent filed in this cause in support of a motion to set aside the report herein submitted by Daniel Davenport, James M. Beck and myself, Committee, on oath say that my employment as counsel for the Buck's Stove and Range Company in its litigation with the American Federation of Labor and others was effected by James M. Beck, Esq., one of the counsel for that Company; that, at the time of said employment and for many months afterwards, I was not aware of the existence of any such organization as the American Anti-Boycott Association or the National Manufacturers' Association; that, in the course of said litigation, I received several remittances in aid of its prosecution in the form of checks, drawn by "Henry A. Potter, Treasurer," which checks, at a comparatively late period in the progress of the litigation, I learned had been drawn by him in his capacity as Treasurer of the Anti-Boycott Association, under an agreement between that Association and its members by which it was obligated to defray, either wholly or in part, the expenses of the litigation in which they might become involved, growing out of boycotts; that I have at no time had any conferences or communications with either the American Anti-Boycott Association or with the National Manufacturers' Association, and

207 that I have received no instructions, advices or suggestions of any kind from either of them, directly or indirectly, in regard to the conduct of the said litigation, my conferences, communications and instructions in that regard being wholly with the Buck's Stove and Range Company, through its President; that the services which I undertook to render in the said litigation, and my connection therewith, completely terminated with the arguments therein before the Supreme Court of the United States at its October, 1910, Term; that, neither at the time of my appointment as a member of the Committee in this proceeding to report to the court whether there was reasonable cause to believe that the respondent was guilty of contempt of court in the violation of its injunctions, and in that event to prosecute a charge of contempt against him, nor subsequently thereto, was I, or have I been, in the employ, for any purpose, of the American Anti-Boycott Association, the National Manufacturers' Association or the Buck's Stove and Range Company, and that, contrary to the allegation of the said affidavit, my appearance and participation in the arguments before the Supreme

Court of the United States in the matter of the said litigation was pursuant to instructions of the Buck's Stove and Range Company, through its President, that its adjustment with the American Federation of Labor was not intended to interfere in any manner with the prosecution of the said litigation. So far from being biased or prejudiced against the respondent, or hostile to him, I cordially united in the suggestion of the Committee in their Report that,

208 since the Supreme Court of the United States has now decided adversely to the position contended for by him, and in view of which he theretofore had contended that he was rightfully entitled to disobey the injunctions of this court, he might be willing to admit his error and give assurances of future submission to the court, which suggestion was made in the hope that, as a law-abiding citizen, the respondent would be willing to accept the decision of the highest tribunal known to the Constitution and laws of his Country as conclusive of the question, and thereby render further prosecution against him unnecessary. My appointment as a member of the Committee was in no manner in pursuance of any application or desire upon my part, and, while ready to perform any duty to which I am assigned by the Court, I have at all times been more than willing that some other member of the Bar should be designated in my stead for the prosecution of the charges of contempt against the respondent.

The connection of Mr. James M. Beck, who is now absent from the country, with the litigation between the Buck's Stove and Range Company and the American Federation of Labor, the respondent and others, terminated with his argument of the contempt proceedings before the Court of Appeals, in the month of April, 1909, since which time, according to my best knowledge, information and belief, Mr. Beck has sustained no professional or other relation toward the Buck's Stove and Range Company, the American Anti-Boycott Association or the National Manufacturers' Association, if, in fact, he ever sustained any relation to any of the said parties other than the said Buck's Stove and Range Company.

JOSEPH J. DARLINGTON.

Subscribed and sworn to before me this 24th day of July, A. D. 1911.

J. R. YOUNG, *Clk.*
By F. E. CUNNINGHAM, *Ass't Clk.*

209

Pleas.

Filed July 24, 1911.

* * * * *

John Mitchell, respondent, for plea to the charges against him, says—

1. That he is not guilty of them, or any of them.

2. That the matters and things complained of in paragraphs one to three inclusive did not occur within three years before the bringing of this action.

3. That the matters and things complained of in paragraphs one to three inclusive occurred, if at all, as the court well knew, more than three years before the commencement of this action, and that any complaint with relation thereto is barred because of laches on the part of the court or judges, assumed or alleged to have been affected thereby.

4. That the delay in the presentation of the charges in this action has been so unreasonable that this respondent should not be called upon to answer them.

ALTON B. PARKER,
RALSTON, SIDMONS &
RICHARDSON,
Attorneys for Respondent.

Order Appointing Clarence R. Wilson to Assist in the Presentation of Charges.

Filed July 24, 1911.

* * * * *

210 This cause coming on to be heard further upon the motion of the respondent to amend the order "empowering J. J. Darlington, Daniel Davenport and James M. Beck, Esqrs. to prosecute the charges of contempt against this defendant be amended by striking out the names of the said Darlington, Davenport and Beck and substituting the Attorney of the United States for the District of Columbia," and the Court having heard read the communication of Hon. Clarence R. Wilson, United States District Attorney herein this day filed, and being of the opinion that it is without power to designate Mr. Wilson to take a part in his official capacity: it is ordered that Hon. Clarence R. Wilson, a member of the Bar, be and he is hereby authorized and designated together with Messrs. Darlington, Davenport and Beck to present to the Court the said charges, according to right and justice in the premises.

WRIGHT.

Motion to Amend Order Appointing Prosecuting Attorneys.

Filed July 24, 1911.

* * * * *

Now comes John Mitchell by Alton B. Parker, Ralston, Siddons and Richardson, his attorneys, and moves the Court that the order heretofore made in this proceeding empowering J. J. Darlington, Daniel Davenport and James M. Beck, Esqs., to prosecute the charges of contempt against this defendant be amended by striking out the names of the said Darlington, Davenport and Beck and substituting the Attorney of the United States for the District of Columbia, and for cause says that the said Darlington, Davenport and Beck, by reason of their employment

211

as attorneys for the plaintiff in the suit of the Buck Stove and Range Company against Gompers and others, are necessarily biased and prejudiced against this defendant and his co-defendants and are not properly qualified to prosecute the said charges of contempt, and that their appointment by the Court to prosecute the said charges was unlawful and contrary to a statute expressly providing that criminal prosecutions in the District of Columbia shall be conducted by the Attorney of the United States for the District of Columbia or his assistants.

ALTON B. PARKER,
RALSTON, SIDDON &
RICHARDSON,

Attorneys for the Defendant John Mitchell.

Dated July 17, 1911.

Motion and Interrogatories.

Filed July 27, 1911.

* * * * *

Now comes Joseph J. Darlington, Daniel Davenport, James M. Beck and Clarence A. Wilson, Committee appointed by the Court to prosecute charges for contempt against the above named respondent, and move the court for an order requiring the said respondent, at his election, either to answer under oath the charges of contempt filed against him in the above cause on the 26th day of June, 1911, or to make specific answer, under oath, to the interrogatories in relation thereto annexed to and made a part of this motion.

JOSEPH J. DARLINGTON,
DANIEL DAVENPORT,

For Committee.

212 Messrs. Alton B. Parker and Ralston & Siddons, Solicitors for Respondent John Mitchell:

Please take notice that on Monday next, the 31st day of July, 1911, at 10 o'clock a. m., or so soon thereafter as counsel may be heard, the above motion will be presented to the court for its action.

JOSEPH J. DARLINGTON,
DANIEL DAVENPORT,

For Committee.

Service of the above motion and notice, with the accompanying interrogatories, accepted this 27th day of July, 1911.

RALSTON, SIDDON & RICHARDSON,

For John Mitchell.

Interrogatories.

* * * * *

1. State whether on the 17th day of December, 1907, you were, and if so, how long you continued to be, the Vice President of the

American Federation of Labor and a member of its Executive Council.

2. State whether you signed, or authorized any other person or persons to sign your name to a paper designated an "Urgent Appeal for Financial Aid in Defence of Free Press and Free Speech," and which paper contained the language set forth in Paragraph I of the charges of contempt against you filed in the above entitled cause on June 26th, 1911.

3. If you shall answer in reply to the last preceding interrogatory that you neither signed nor authorized any other person or persons to sign with your name the said "Urgent Appeal," state when you first saw a copy of the said "Appeal" and learned
213 that it was being circulated over your signature, and what steps, if any, you then or at any time subsequently took to disavow the same, or to prevent the circulation of the said "Urgent Appeal" over your signature.

4. If you shall answer in reply to the second of the above interrogatories propounded to you that you neither signed nor authorized anyone else to sign your name to the said "Urgent Appeal," state when you first saw or learned the fact that an editorial from the February, 1908, Federationist, entitled "Free Press, Free Speech Invaded by Injunction against A. F. of L., A Review and A Protest," had been re-printed and was being circulated in connection with the said "Urgent Appeal," and what steps, if any, you then or at any subsequent time took to repudiate your signature to the said "Urgent Appeal," or to make known the fact that you had neither signed it nor authorized it to be signed with your name.

5. If you shall answer to the second of the above interrogatories that you neither signed the said "Urgent Appeal" nor authorized any other person or persons to append your name thereto as a signer thereof, state when you first learned that the editorial in the February, 1908, issue of the Federationist set forth in Paragraph II of the said charges against you had been re-printed and was being circulated in conjunction with the said "Urgent Appeal," purporting to bear your signature, and what steps you then, or at any time subsequently, took to prevent the circulation of the same in conjunction with the said "Urgent Appeal" issued under the sanction of your signature.

6. State whether on or about the 25th day of January, 1908, you presided, as its President, over the Annual Convention
214 of the United Mine Workers of America, and whether, as said Presiding Officer, you entertained, put to a vote and declared to have been adopted the resolution set forth in Paragraph III of the said charges of contempt filed against you in the above entitled cause on June 26th, 1911.

7. State whether, in an address delivered by you before the Convention of United Mine Workers held in Indianapolis on January 22, 1909, you made the statements in regard to the passage of the resolution last above referred to, set forth in Paragraph III of the said charges, and, also, whether you furnished to the United Mine

Workers a copy of the said remarks, as published by it on January 28th, 1909, as set forth in said Paragraph III, or in any other manner aided, contributed to or co-operated in the publication thereof.

JOSEPH J. DARLINGTON,
For Committee.

Order Fixing Time to Answer Charges.

Filed July 31, 1911.

* * * * *

Upon consideration of the motion of Joseph J. Darlington, Daniel Davenport, James M. Beck, and Clarence R. Wilson, Committee, filed herein on the 27th day of July, A. D. 1911, requiring the above named respondent John Mitchell to answer under oath the charges of contempt filed against him in the above entitled cause on the 26th day of June, A. D. 1911, or to make specific answer under oath to the interrogatories in relation thereto annexed to the said motion, and the same having been argued on behalf of 215 the said Committee and by the solicitors of the said respondent, it is by the Court, this 31st day of July, A. D. 1911, ordered that the said John Mitchell file in this cause within 20 days after the date hereof, such answer, affidavit or other statement or statements under oath, if any, as he may desire to offer to the court in denial of or reply to the said charges of contempt, under oath, so filed against him in the above entitled cause, or tending to show why he should not be adjudged to be in contempt of the orders and decrees of this Court in Equity Cause No. 27,305 as therein charged, and be punished for the same.

WRIGHT.

Plea of Former Jeopardy.

Filed July 31, 1911.

* * * * *

Now comes the respondent, John Mitchell, in his own person and prays judgment of the charges filed against him and that they may be quashed because he says that charges of the same tenor and effect were preferred against him by the Buck's Stove and Range Company in Equity cause No. 27,305, and filed July 20, 1908, and were prosecuted before the Supreme Court of the District of Columbia, sitting in Equity in said cause, and that he was put upon his trial before said court and a hearing was had thereon, and the court adjudged him guilty thereof, and sentenced him to a term of nine months in jail, by a decree dated December 23, 1908, and this he is ready to verify, and wherefore, he prays judgment of the charges filed against him, and that the same may be quashed.

JOHN MITCHELL.

216 Subscribed and sworn to before me this 28th day of July,
1911.
[SEAL.]

O. W. MEIER,
Notary Public.

Answer.

Filed August 19, 1911.

* * * * *

John Mitchell, for answer to the charges against him, says:

1. That he is not guilty of them or any of them.
2. That the matters and things complained of in paragraphs one to three inclusive, and in each of said paragraphs, did not occur within three years before the bringing of this action.
3. That the matters and things complained of in paragraphs one to three inclusive, and in each of them, occurred, if at all, as the court well knew, more than three years before the commencement of this action, and that any complaint with relation thereto is barred because of laches on the part of the court or judges assumed or alleged to have been affected thereby.
4. That the delay in the presentation of the charges in this action has been so unreasonable that this respondent should not be called upon to answer them.

JOHN MITCHELL.

STATE OF MISSOURI.

County of Jackson, ss:

John Mitchell, being first duly sworn, on oath says that
217 he has read the foregoing answer by him signed and knows
the contents thereof. That the same are true to the best of
his knowledge and belief, except as to the matters and things therein
stated upon information and belief, and that as to the same, he be-
lieves them to be true.

Subscribed and sworn to before me this 31st day of July, A. D.
1911.

[SEAL.]

HORTENSE R. QUIGLEY,
Notary Public.

My commission expires May 7th 1914.

218 *Motion to Dismiss Charges.*

Filed October 12, 1911.

* * * * *

Now comes John Mitchell, respondent, by Ralston, Siddons and Richardson, and Alton B. Parker, his attorneys, and moves the Court to dismiss the information and charges filed against him, and for cause says:

1. There has been no proper replication filed to the plea of the statute of limitations presented by him, it appearing upon the face of the said information and charges that many of the actions complained of therein, occurred more than three years before the filing of said information and charges.

2. No pleading has been filed herein offering any justification or excuse for the laches in bringing this proceeding on the part of the Court assumed or alleged to have been treated with contempt by the actions with which respondent is charged, in the aforesaid information and charges, as set forth in this respondent's answer filed herein.

3. No pleading of any kind has been filed to account for the unreasonable delay in the institution of these proceedings, as alleged in this respondent's answer filed herein.

JOHN MITCHELL,
By ALTON B. PARKER,
RALSTON, SIDDON &
RICHARDSON,
Attorneys.

Service accepted Oct. 12/11.

J. J. DARLINGTON,
For Committee.

219 *Order Overruling Motion to Dismiss Proceeding, Etc.*

Filed November 23, 1911.

* * * * *

Upon consideration of the motion of the respondent in the above entitled cause to dismiss the proceedings therein, and of the motion made by the committee to appoint an examiner to take the testimony in the cause, and after argument on behalf of the committee and by counsel for the respondent and consideration thereof, it is by the court, this 23d day of November, 1911, ordered:

1. That the motion of the respondent to dismiss the proceedings in this case against him be, and the same hereby is, denied.

2. That three days be allowed the committee and counsel for the respondent within which to agree upon a commissioner to take testimony in the cause; it being further ordered that the examination of witnesses in open court may be allowed with respect to any witnesses for whose examination in such manner application shall be made to the court.

WRIGHT, *Justice.*

To the making of the above order and to each and every paragraph thereof in their several order the above-named respondent by his counsel at the time in open Court objects and excepts.

Stipulation to Refer Cause to Examiner.

Filed December 9, 1911.

* * * * *

220 It is hereby agreed by the Solicitors in this proceeding that the same may be referred to Albert Harper, Esq., United States Commissioner, for the purpose of taking evidence therein pursuant to the order of the Court passed in said proceeding on the 23d day of November, 1911, the Solicitor for the Respondent entering into this stipulation without prejudice to the exceptions noted by him to the said order.

J. J. DARLINGTON,
On Behalf of Committee.
 RALSTON, SIDDONS &
 RICHARDSON,
Solicitor for Respondent.

Order.

Filed December 15, 1911.

* * * * *

It is by the court this 15th day of December, 1911, after hearing counsel for the respective parties, ordered that the above proceeding be, and the same hereby is, referred to Albert Harper, Esq., United States Commissioner, for the purpose of taking such testimony as may be adduced before him by the Committee and the respondent, respectively; that the Committee have thirty days from the date hereof within which to take testimony in chief in support of the charges preferred by it against respondent; that the respondent have thirty days after the conclusion of the testimony on behalf of the Committee within which to take testimony on his behalf in reply, and that the Committee have ten days after the conclusion of the testimony on behalf of the respondent within which to take testimony in rebuttal, this order to be without prejudice to

221 the right of either party to take the depositions or the affidavits, as they may be advised, of witnesses residing beyond the District of Columbia, within the time herein limited for taking testimony in the cause, or to apply to the court for leave to examine in open court any witness or witnesses whose testimony either side may desire to have taken in that manner.

To the granting of the above order and to each clause thereof permitting testimony to be taken out of open Court or by a commissioner or by affidavits or in any manner out of the District of Columbia the respondent by Ralston, Siddons & Richardson, his attorneys, in open Court and at the time of its granting objects and excepts.

WRIGHT.

Notice of Taking of Testimony.

Filed December 26, 1911.

* * * * *

Messrs. Ralston & Siddons, Counsel for Respondent.

GENTLEMEN: Please take notice that on Saturday, the 30th day of December, 1911, at 10:30 o'clock A. M., in Equity Court No. 2, we shall proceed to take testimony in open court in support of the charges against the above respondent contained in the Report of the Committee, filed in the above entitled cause.

J. J. DARLINGTON.

JAMES M. BECK.

DAN'L DAVENPORT.

CLARENCE R. WILSON.

222 Without waiving exceptions service of above excepted
Dec. 26, 1911.

RALSTON, SIDDONS & RICHARDSON,

*Attorneys for Respondent.**Order Appointing Stenographer to Report Testimony in Open Court.*

Filed December 30, 1911.

* * * * *

It is by the Court this 30th day of December, 1911, ordered that Albert Harper, Esq., be, and he hereby is, appointed stenographer to report the testimony of such witnesses in this proceeding as shall be examined in open court, and that the depositions of such other witnesses as may be examined by either of the parties thereto shall be taken before him in his capacity as an Examiner in Chancery of this Court.

WRIGHT, *Justice.*

Objected and excepted to in open court by respondent as far as applicable as to his appointment as Commissioner.

RALSTON, SIDDONS & RICHARDSON,

*Attys for Respondent.**Motion for Signing of Certain Orders Nunc Pro Tunc.*

Filed March 19, 1912.

* * * * *

Messrs. Daniel Davenport, J. J. Darlington, James M. Beck, and Clarence Wilson, Committee:

223 You will please take notice that on Monday, March 11, 1912, at the opening of court, or as soon thereafter as the same may be heard, the undersigned will call to the attention of the Court the matters and things hereinafter referred to, relying,

in their presentation, upon the record of proceedings, a copy of which is in your possession.

RALSTON, SIDDON & RICHARDSON,

Respondent Mitchell's Attorneys.

March 5, 1912.

Service by copy acknowledged March 6, 1912.

J. J. DARLINGTON.

In the Supreme Court of the District of Columbia.

Equity. 30180.

In re JOHN MITCHELL.

Now comes the respondent, John Mitchell, and, basing this motion upon the proceedings had on the respective days indicated and other days, moves the Court for the passing nunc pro tunc of orders copies of which are hereto attached.

RALSTON, SIDDON & RICHARDSON,

Respondent Mitchell's Attorneys.

Filed June 28, 1912.

* * * * *

It appearing that upon the hearing of the above entitled cause on Monday, July 17, 1911, respondent's attorney moved for the dismissal of these proceedings upon the ground that the order of injunction, alleged to have been violated, was not made by Mr. Justice Wright, before whom this proceeding was brought, when he was a member of that branch of the Supreme Court of the District of Columbia, by which the order was made, and was
224 not on said date a member as of the date of July 17, 1911, and that this order be entered as of said date.

Whereupon, and as of said date of July 17, 1911, an exception is noted on behalf of respondent.

WRIGHT.

* * * * *

It appearing that in the course of the proceedings on July 17, 1911, the following occurred:

"The Court who heard the testimony in the prior proceeding could not doubt that there was reasonable ground to believe that a contempt of court had been committed, and if this committee had reported adversely, I do not think the court's duty would have permitted it to receive the report. Those considerations are utterly independent of the outcome of this proceeding, because, as I have indicated, the court cannot say in advance what evidence will be produced in the future."

* * * * *

"Mr. RALSTON: If your Honor please we desire to note an exception to your Honor's order overruling the motion.

"Your Honor a moment ago stated that if these gentlemen had made a different conclusion and had reported that no contempt had been committed, you would not have accepted the report, because your Honor has evidence that it had been committed.

"The COURT: No; I said 'reasonable ground to believe' a contempt had been committed.

225 "Mr. RALSTON: I understood your Honor to use a stronger expression than that.

"The COURT: That is what I intended.

"Mr. RALSTON: I desire then, with all due respect, in view of the expressions from the bench, to except to being obliged, on behalf of my clients, to submit further motions before your Honor. We submit that for your Honor's judgment.

"The COURT: You submit what?

"Mr. RALSTON: I submit to your Honor's judgment whether under the circumstances we shall be obliged on behalf of the respondents, to proceed further before your Honor.

"The COURT: I do not exactly know what you mean by 'proceeding further.'

"Mr. RALSTON: We are ready to proceed. As we conceive it, your Honor has expressed an opinion which we would certainly at least have great difficulty in overcoming, and in view of the expression of opinion, we submit the question to your Honor as to whether we should further proceed with the next step in this case before your Honor, and whether your Honor should not certify the matter to some other member of the Court.

"The COURT: You may proceed.

"Mr. RALSTON: We note an exception to the direction of his Honor to proceed."

226 But — no formal entry of the order of the Court, or of the exception thereto was made by the Clerk, it is this — day of —, 1912.

Ordered, as of the date of July 17, 1911, that respondent proceed in this cause before the Justice trying the same.

Whereupon, and as of said date of July 17, 1911, an exception is noted on behalf of respondent.

* * * * *

It appearing that on July 24, 1911, the following occurred:

"The COURT: On Monday, this, amongst other things, occurred: (Reading from the transcript.)

"Mr. RALSTON: I desire then, with all due respect, in view of the expressions from the bench, to except to being obliged, on behalf of my clients, to submit further motions before your Honor. We submit that for your Honor's judgment.

"The COURT: You submit what?

"Mr. RALSTON: I submit to your Honor's judgment whether under the circumstances we shall be obliged, on behalf of the respondents, to proceed further before your Honor.

"The COURT: I do not exactly know what you mean by 'proceed further.'

"Mr. RALSTON: We are ready to proceed. As we conceive it, your Honor has expressed an opinion which we would certainly at least have great difficulty in overcoming, and in view of that ex-
227 pression of opinion, we submit the question to your Honor as to whether we should further proceed with the next step in this case before your Honor, and whether your Honor should not certify the matter to some other member of the Court.

"The COURT: You may proceed.

"I have reflected further since then upon the suggestion.

"Whatever might have been the disposition of the presiding justice had there been preferred in orderly manner before the Court a suggestion that another of the Court take up the burden of this proceeding, yet now there is no alternative.

"The attack made before a Committee of Congress by parties defendant permits no course but one.

"The respondents have themselves deprived the justice of all alternative save to go forward with the duties of the Court and carry them through to the end.

"I noticed in the report of the reporters several inaccuracies which I have corrected in the copy that the reporter submitted to me. Here is the copy containing the corrections. If there is any question to be made about their correctness, it may be settled presently and not arise later. I submit it to counsel, to examine at their leisure. They need not do it now.

"Mr. RALSTON: In order that there may be no question on the face of the record, if your Honor please, while I think we
228 have noted an exception before, I should like again to note an exception to your Honor's proceeding.

"The COURT: Yes. You may proceed, gentlemen."

But it further appearing that no entry of said order, or of the exception thereto was made at the time by the Clerk, it is this — day of —, 1912.

Ordered, as of date of July 24, 1911, that the respondent proceed in this cause before the Justice trying the same.

Whereupon, and as of said date of July 24, 1911, an exception is noted on behalf of respondent.

* * * * *

It appearing that on July 17, 1911, the respondent, by his attorneys, moved the Court that the names of J. J. Darlington, Daniel Davenport, and James M. Beck be struck out of the order theretofore made, requiring them to prosecute the charges of contempt against this defendant, and that the name of the District Attorney of the United States for the District of Columbia be substituted therefor, because of the fact that the said J. J. Darlington, Daniel Davenport and James M. Beck, by reason of their employment of attorneys for plaintiff in the suit of the Buck's Stove and Range Company vs. Samuel Gompers et al., was necessarily biased and prejudiced against this defendant and his co-defendants, and not properly qualified to prosecute the said damages of contempt, all of which will more fully appear from said motion, and that the said motion was, upon consid-

229 eration, overruled, and an exception thereto noted, and it further appearing that no entry with relation thereto, or to said exception was made by the Clerk, it is this 28th day of June, 1912,

Ordered, That the said motion be, and the same if hereby overruled as of the date of July 17, 1911.

Whereupon, and as of said date of July 17, 1911, an exception is noted on behalf of respondent.

WRIGHT, *Justice*.

* * * * *

It appearing that on July 17, 1911, a motion for a bill of particulars was made, which, with supporting affidavits, was filed at that time, and was further heard and passed upon on Monday, July 24, 1911, which motion and the several paragraphs thereof, were overruled and exceptions thereto were duly taken, but that no entries were made by the Clerk, it is this 28 day of June, 1912.

Ordered, That the said motion for a bill of particulars and the several paragraphs thereof stand overruled as of the date of July 24, 1911.

Whereupon, and as of said date of July 24, 1911, an exception is noted on behalf of respondent.

WRIGHT, *Justice*.

Assignments of Error.

Filed July 3, 1912.

* * * * *

The appellee and respondent above named, assigns for error in the above entitled cause, the following:

230 1. The Court erred in overruling the motion to dismiss these proceedings on the ground that the order of injunction alleged to have been violated was not made by the Justice before whom this proceeding was brought when he was a member of that branch of the Supreme Court of the District of Columbia by which the order was made, and was not, on the date of beginning these proceedings, a member thereof, and that he had no jurisdiction or authority to proceed herein; and furthermore, that at the time the order certifying the cause to Mr. Justice Wright, was made, there was nothing pending in the case of the Back's Stove and Range Company vs. Gompers et al., in the Equity Court, or the Supreme Court of the District of Columbia, and nothing to be certified, and that the trial, if at all, should have been had, in the first instance, by that branch of the Court against which a contempt was supposed to have been committed, as will more fully appear from the motion herein filed.

2. The Court erred in overruling the motion to quash these proceedings on the ground that they were criminal in their nature, these proceedings being brought in equity.

3. The Court erred in overruling the motion to set aside the report submitted herein by the Committee.

4. The Court erred in refusing to strike out the names of the Committee and substituting the name of the Attorney of the United States for the District of Columbia therefor, the said Committee having been biased by reason of their employment as attorneys for plaintiff in the suit of the Buck's Stove and Range Company against Samuel Gompers et al.

5. The Court erred in overruling, on July 24, 1911, the motion for bill of particulars filed herein.

6. The Court erred in overruling a motion to dismiss these proceedings, based upon the ground that no proper replication had been filed to the plea of the statute of limitations.

7. The Court erred in overruling the plea of the statute of limitations herein.

8. The Court erred in appointing a United States Commissioner for the purpose of taking testimony in this cause.

9. The Court erred in receiving improper testimony over the objection of the respondent, as shown by the bill of exceptions herein.

10. The Court erred in excluding proper testimony offered on behalf of the respondent, as shown by the bill of exceptions herein.

11. The Court erred in finding that there was any evidence tending to hold the respondent guilty of the charges made against him, or any of them.

12. The Court erred in finding the respondent guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

13. The Court erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by the respondent after December 23, 1907.

14. The Court erred in not finding that any charges against this respondent herein were barred by the statute of limitations.

15. The Court erred in finding the respondent guilty of the charges against him.

16. The Court erred in inflicting a criminal punishment when sitting otherwise as Court in Equity.

ALTON B. PARKER,
RALSTON, SIDONS &
RICHARDSON,
Attorneys for Respondent.

Service by copy acknowledged July 3, 1912.

232

Additional Designation.

Filed July 5, 1912.

* * * * *

In addition to the parts of the record resigned by the respondents to be included in the transcript of record for appeal in the above

cause, kindly include the order upon the above respondent to show cause issued therein under date of the 26th day of June, 1911.

J. J. DARLINGTON,
For Committee.

To Jno. R. Young, Esq., Clerk Sup. Ct., D. C.

233

Stipulation.

Filed July 23, 1912.

* * * * *

Now comes John Mitchell, respondent in the above entitled cause, and showing to the Court that he is at this time at a great distance from the city of Washington, D. C., and that attendance there at this time would be the occasion of serious inconvenience to him, requests that the sentence to be imposed upon him in the above entitled cause may be imposed without requiring his personal presence, he hereby waiving, so far as the imposition of sentence is concerned, any right upon his part to be present at the time of its imposition and stipulates that it shall have the same force and effect as if he were personally present.

JOHN MITCHELL, *Respondent.*

Witnesses:

HARRY YANCKWICH.
H. J. PARKISON.

Subscribed and sworn to Before Me this 17th day of July, A. D. 1912.

[SEAL.]

H. J. PARKISON,
Notary Public for Oregon.

Adjudication of Contempt.

Filed July 23, 1912.

* * * * *

The above proceeding coming on to be heard upon the report of Joseph J. Darlington, Daniel Davenport and James M. Beck, appointed by the Court a Committee to investigate and report to the Court whether or not the said John Mitchell has been guilty of contempt of this Court in wilfully violating the terms of the injunctions issued by it in the cause of the Buck's Stove and Range Company vs. American Federation of Labor, Samuel Gompers, et al., No. 27305, Equity, and upon the answer of the respondent to the said report and to the rule to show cause issued thereunder, and upon the testimony taken in support of the allegations of the said report and of the said answer, and having been argued on behalf of the Committee and by counsel for the respondent,

234

It is thereupon by the Court, this 23rd day of July, A. D. 1912, upon consideration thereof, Adjudged: That the respondent John Mitchell is guilty of a contempt of this Court in wilfully violating the terms of the injunction of this Court issued by it on the 18th day of December, A. D. 1907, in the said Equity Cause No. 27,305; and it is thereupon further ordered and adjudged that the said John Mitchell be confined in the prison of the Washington Asylum and Jail for and during the period of nine (9) months, said imprisonment to take effect from and including the date of the arrival of the said respondent John Mitchell at said jail:

• From the foregoing judgment, the respondent John Mitchell prays an appeal to the Court of Appeals of the District of Columbia, which is allowed, and the penalty of the appeal bond is fixed at One Hundred (\$100) Dollars, and the penalty of the bail or appearance bond is hereby fixed at four Thousand (\$4,000) Dollars.

WRIGHT, *Justice*.

To the foregoing order and judgment, and to the several findings of fact and law therein contained, the defendant in open court then and there objects and excepts.

WRIGHT, *Justice*.

235 MEMORANDUM.—Appeal bond \$100, approved and filed.

Stipulation as to Bill of Exceptions, Etc.

Filed August 9, 1912.

* * * * *

It is hereby stipulated and agreed by and between Ralston, Sidons & Richardson, attorneys for the respondent, and Joseph J. Darlington, Esq., on behalf of the Committee, that the Bill of Exceptions, a copy of which has heretofore been served upon the Committee by counsel for the respondent, which said Bill of Exceptions purports to embrace the record in the following cases: ex parte Samuel Gompers, ex parte Frank Morrison and ex parte John Mitchell, all under Equity No. 30,180, may when settled, be considered on any appeals in the above entitled cause as a part of the record on appeal in the case of ex parte John Mitchell; that there shall be added to the designation of record for the transcript of record on appeal, the order of the Supreme Court of the District of Columbia of July 23, 1912, and the stipulation upon which said order was made, the exception to said order, noted at the foot thereof, the notation of appeal, and the filing and approval of appeal and Bail Bonds.

It is further stipulated that the Assignments of Error filed in this cause on July 3, 1912, shall be considered as of the same legal effect as if the same were filed subsequent to July 23, 1912.

It is further stipulated that the following additional Assignment of Error, to be numbered seventeen (17), shall be considered as a part of the aforesaid Assignments of Error:

236 "The court erred in imposing the punishment specified in its order and judgment, in that the said punishment is cruel and unusual within the meaning and intent of the Constitution of the United States".

RALSTON, SIDDON &
RICHARDSON,

Attorneys for Respondent.

J. J. DARLINGTON,

For the Committee.

* * * * *

The above proceeding coming on to be heard upon the report of Joseph J. Darlington, Daniel Davenport and James M. Beck, appointed by the Court a Committee to investigate and report to the Court whether or not the said John Mitchell has been guilty of contempt of this Court in wilfully violating the terms of the injunctions issued by it in the cause of the Buck's Stove and Range Company vs. American Federation of Labor, Samuel Gompers, et al., No. 27,305, Equity, and upon the answer of the respondent to the said report and to the rule to show cause issued thereunder, and upon the testimony taken in support of the allegations of the said report and of the said answer, and having been argued on behalf of the Committee and by counsel for the respondent,

It is thereupon by the Court, this 23rd day of July, A. D. 1912, upon consideration thereof, adjudged: That the respondent John Mitchell is guilty of a contempt of this Court in wilfully violating the terms of the injunction of this Court issued by it on the 18th day of December, A. D. 1907, in the said Equity Cause No. 27,305; and it is thereupon further ordered and adjudged that the said John

237 Mitchell be confined in the prison of the Washington Asylum and Jail for and during the period of nine (9) months, said imprisonment to take effect from and including the date of the arrival of the said respondent John Mitchell at said jail;

From the foregoing judgment, the respondent John Mitchell prays an appeal to the Court of Appeals of the District of Columbia, which is allowed, and the penalty of the appeal bond is fixed at One Hundred (\$100) Dollars, and the penalty of the bail or appearance bond is hereby fixed at Four Thousand (\$4,000) Dollars.

WRIGHT, *Justice.*

To the foregoing order and judgment, and to the several findings of fact and law therein contained, the defendant in open court then and there objects and excepts.

WRIGHT, *Justice.*

238

Proceedings in Contempt.

Filed June 26, 1911.

In the Supreme Court of the District of Columbia.

Equity. No. 30180.

In re FRANK MORRISON.

The undersigned, directed by the Court's order of May 16, 1911, to inquire whether the above named Frank Morrison has been guilty of contempt in wilfully violating the terms of an injunction issued by the Court in the case of the Buck's Stove & Range Company vs. The American Federation of Labor, Frank Morrison and others, defendants, No. 27,305, Equity, and, if yea, to file and present charges of such contempt of court to the end that its authority be established, vindicated and sustained, report that there is reasonable cause to believe that the said Frank Morrison is guilty as aforesaid, and they accordingly present the following:

Heretofore, to wit, on the 18th day of December, 1907, this court, in said Equity cause No. 27,305, granted an injunction pendente lite against the said American Federation, Frank Morrison and others, a copy whereof is hereto annexed, marked Exhibit "A," and made a part hereof, wherein and whereby the said Frank Morrison, together with the other defendants in the said equity cause therein named, were restrained and enjoined from conspiring or combining in any manner to restrain, obstruct, or destroy the business of the Buck's Stove & Range Company, complainant in said equity cause, or to prevent it from carrying on its business without interference from them or any of them, from interfering in any manner with the sale of the product of its factory or business, from declaring
239 or threatening any boycott against it, its business, or its product, from printing, issuing, publishing or distributing through the mails or in any other manner any copy or copies of the American Federationist, or any other written or printed newspapers, magazines, circular, letter or other document or instrument whatsoever which should contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize," or the "Unfair" list of the said defendants, or any of them, or containing any reference to the complainant, its business or its product, in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement or notice of any kind or character whatsoever, calling attention to the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same were, or had been declared to be "Unfair," and from making any representation or statement of like effect or import, for the purpose

of or tending to any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm or corporation, or the public, not to purchase, use, buy, trade or deal in stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in the complainant's product, either directly or through orders, directions or suggestions to committees, associations, officers, agents or others for the performance of any such acts or threats, and from in any manner whatsoever impeding, obstructing, interfering with or restraining complainant's business, trade or commerce, in the State of Missouri, or in other States and Territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid; which injunction thereafter, namely, on the 23d day of December, 1907, became technically operative by the filing by the complainant in said equity cause of an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitably suing out the injunction, as provided in and by the said order of injunction, and in conformity with the rules of this court.

The said decree of injunction pendente lite was followed by a final decree against the said American Federation of Labor, Frank Morrison and others, passed on the 23d day of March, 1908, perpetually restraining and enjoining the said defendants from doing any of the said acts or things so prohibited by the said decree of December 18, 1907, a copy of which final decree is herewith filed, marked Exhibit "B" and made a part hereof.

There is reasonable cause to believe, and it is hereby charged, that the said Frank Morrison was guilty of contempt in wilfully violating the terms of the said injunction in the following particulars:

1. In his capacity as Secretary of the American Federation of Labor, he received and became the custodian, on or about the 31st day of December, 1907, of a large number, to wit, 9000 copies of the printed proceedings of the 1907 Convention of the American Federation of Labor, which printed proceedings not only set forth the name of the Buck's Stove & Range Company in connection with the "We Don't Patronize" or "Unfair" list of the American Federation of Labor, but contained, also, resolutions adopted by the American Federation of Labor at its said convention requesting each central body affiliated with the American Federation of Labor to appoint a committee which should conduct and manage a "Campaign of Education," among the membership as well as among dealers in stoves and ranges in their locality, and thoroughly inform them as to the attitude of J. W. Van Cleave, the President of the Buck's Stove & Range Company, toward organized labor, which resolution further required that the committees of the several central bodies so appointed should report to the officers of the American Federation of Labor on the first day of each month the

progress of the said "Campaign of Education," together with a complete list of all dealers in their locality who were handling and selling the product of the Buck's Stove & Range Company, and, further that all commissioned organizers of the American Federation of Labor, who were some 1200 in number, should report to the officers of the American Federation of Labor on the first day of each month the progress made in the said "Campaign of Education" by the different committees of the different central bodies in their respective Districts, and to render such aid to all committees as lay in their power; and the said Frank Morrison, with full knowledge of their contents as above set forth, wilfully caused and permitted a large number, to wit, 6,000 of the said copies of the printed proceedings of the said Norfolk Convention to be published, circulated and distributed throughout the United States, in violation of the 242 injunction of December 18, 1907, which was then in full force, operation and effect.

II. On or about the 24th day of January, 1908, the said Frank Morrison wilfully united with Samuel Gompers, John Mitchell and others in printing and widely circulating a large number, to wit, many thousands of copies of a paper designated by them an "Urgent Appeal for Financial Aid in Defense of Free Press and Free Speech," and, also, caused the same to be printed in the February, 1908, American Federationist, which "Urgent Appeal," among other things, contained the following language, as he then knew: "To All Organized Labor, Greeting:

"Justice Gould, of the Supreme Court of the District of Columbia, has issued an injunction against the American Federation of Labor and its officers, officially and individually.

"The injunction invades the liberty of the press, the liberty of speech.

"It enjoins the American Federation of Labor, or its officers, from printing, writing, or orally communicating the fact that the Buck's Stove & Range Company has assumed an attitude of hostility toward labor, and that organized labor has made this fact known, and asks our friends to use their influence and purchasing power with a view of bringing about an adjustment of all matters in controversy between that company and organized labor. The injunction is of the most sweeping character, and it, as well as the suit in connection therewith, must of necessity be contested in the courts, though 243 it reach the highest judicial tribunal of our country.

"With this is a re-print of an editorial from the February, 1908, American Federationist, entitled 'Free Speech, Free Press, Invaded by Injunction against A. F. of L.—A Review and Protest.' The editorial contains a full presentation of labor's position in regard to this injunction."

That the said Frank Morrison wilfully caused and assisted in causing to be re-printed, and to be circulated with the said "Urgent Appeal" and as a part thereof, thousands of copies of the said editorial in the February, 1908, American Federationist last above referred to, which said editorial contained, among other things, the following language as he then knew:

"Justice Gould, of the Supreme Court of the District of Columbia, issued an injunction, on December 18, 1907, against the American Federation of Labor and its officers, and all persons within the jurisdiction of the court.

"This injunction enjoined them as officers, or as individuals, from any reference whatsoever to the Buck's Stove and Range Company's relations to organized labor, to the fact that the said Company is regarded as unfair; that it is on an 'Unfair' list, or on the 'We Don't Patronize' list of the American Federation of Labor. The injunction orders that the facts in controversy between the Buck's Stove and Range Co. and organized labor must not be referred to, either by printed or written word or orally. The American Federation of Labor and its officers are each and severally named in the injunction. This injunction is the most sweeping ever issued.

"It is an invasion of the liberty of the press and the right of free speech.

244 "On account of its invasion of these two fundamental liberties, this injunction should be seriously considered by every citizen of our county.

* * * * *

"With all due respect to the court, it is impossible for us to see how we can comply with all the terms of this injunction. We would not be performing our duty to labor and to the public without discussion of this injunction. A great principle is at stake. Our forefathers sacrificed even life in order that these fundamental constitutional rights of free press and free speech might be forever guaranteed to our people. We would be recreant to our duty did we not do all in our power to point out to the people the serious invasion of their liberties which has taken place. That this has been done by judge-made injunction and not by statute law makes the menace all the greater.

* * * * *

"The publication of the Buck's Stove and Range Co. on the 'We Don't Patronize' list of the American Federation of Labor is the exercise of a plain right. To enjoin its publication is to invade and deny the freedom of the press—a right which is guaranteed under our constitution.

* * * * *

"The matter of attempting to suppress the boycott of the Buck's Stove and Range Co. by injunction, while important, yet pales into insignificance before this invasion and denial of constitutional rights.

* * * * *

245 "The members of organized labor are not themselves obliged to refrain from dealing with the firms on the 'We Don't Patronize' list of the American Federation of Labor. The information is given them. There is no compulsion. They are entirely free to use their own judgment.

* * * * *

"No person can be compelled to buy an article. If the purchaser chooses to let alone certain products for any reason, or for no reason, there is no way of compelling him to buy.

"This injunction can not compel union men or their friends to buy the Buck's Stoves and Ranges. For this reason the injunction will fail to bolster up the business of this firm which it claims is so swiftly declining.

"Individuals as members of organized labor will still exercise the right to buy or not to buy the Buck's Stoves and Ranges. It is an exemplification of the saying that: 'You can lead a horse to water but you can't make him drink,' and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not to purchase the Buck's stoves and ranges.

"It may not be amiss here to say that in all these proceedings, whether before the court or in the contest forced upon labor by the Buck's Stove and Range Co., no element of personal malice or ill-will enters. Labor is earnestly desirous of entering into friendly relations with employers, and this is none the less true of its desire to reach an honorable adjustment and agreement with the Buck's Stove and Range Co. So long, however, as that company continues in its hostile attitude to labor, denying it the right to organize, discriminates against union members, and refuses to accord conditions of employment generally regarded as fair in the trade, it must
246 except retaliatory measures; these measures always, however, within the law and for the purpose of ultimately reaching an honorable, mutually advantageous agreement.

"The publication of the Buck's Stove and Range Co. on the 'We Don't Patronize' list of the American Federation of Labor is only an incident in the history of the case. These stoves might have been let as severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing that firm from the list against which we primarily protest, it is this injunction invading the freedom of the press.

"Justice Gould, in one portion of his opinion, says: 'Defendants (the American Federation of Labor) have the right either individually or collectively to sell their labor to whom they please, on such terms as they please, and to DECLINE TO BUY PLAINTIFF'S STOVES; THEY HAVE ALSO THE RIGHT TO DECLINE TO TRAFFIC WITH DEALERS WHO HANDLE PLAINTIFF'S STOVES.' (Heavy type and brackets are ours.)

"Here he states precisely the whole case of the American Federation of Labor. This is what we have done. This is the sum total of labor's offending. The publication of the Buck's Stove and Range Co. and other firms on the 'We Don't Patronize' list is merely giving truthful information at the request of our members as to whether or not certain firms employ union men and concede the other conditions of employment usually granted by those concerns which recognize union labor.

"It would seem that having made the above-quoted statement, Justice Gould would have found in it the reason for a refusal to
247 issue the injunction. He, however, goes on to assume that there has been some unwarrantable interference with the plaintiff's business, though neither in his opinion nor in the injunction itself does he make it clear how he arrived at the conclusion

that the union course was any other than as indicated in his own language."

III. One of the counsel for the complainant in the said equity cause having given an opinion, which had been published, that, while the power of the Supreme Court of the District of Columbia to punish for contempt of court was limited to such persons as it might at any time find within the territorial limits of the District of Columbia, the decree was binding upon all persons comprised within its terms wherever they might reside, and that it was a criminal offense under the Statutes of the United States, punishable by imprisonment in the penitentiary, for any two or more persons anywhere in the United States to conspire together to evade or defeat the decree by doing any of the acts prohibited by it, and that such persons were liable to prosecution therefor by the Federal authorities, the said Gompers in the February, 1908, issue of the American Federationist prefixed, in large type, to a copy of the injunction of December 18, 1907, an editorial in the following language:

"Order Granting Injunction.

"In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove and Range Company declares that punishment for violation of the injunction issued by Justice Gould, against the American Federation of Labor, applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation of Labor assure us that this construction of the court's order is accurate:" the said Frank Morrison, with full knowledge of its contents as above set forth, wilfully caused and assisted in causing thousands of copies of the said editorial to be re-printed for the purpose of circulation, and to be widely circulated throughout the various States and Territories of the United States in conjunction with the said "Urgent Appeal" hereinbefore referred to, for the purpose of suggesting to the two million members of the American Federation of Labor, and all persons in sympathy with them, that they might violate the said injunction of the court and might defeat its object and purpose without danger of punishment, provided they were not, or should not come, within the territorial limits of the District of Columbia.

IV. That the said Frank Morrison, knowing their contents, wilfully aided and co-operated with Samuel Gompers and others in circulating and in causing to be circulated, after the injunction issued by this court prohibiting their circulation, many copies of the American Federationist for each of the months of January, February, March, April, May, June, and September, 1908, each of which not only referred to the Buck's Stove & Range Company, the complainant in said equity cause, in connection with the "We Don't Patronize" or "Unfair" list of the American Federation of Labor, but made

editorial and other references to the said complainant in connection therewith, and to the boycott declared by the American Federation of Labor against it, and to the desirability of continuing and prosecuting the same against it notwithstanding the said injunction, until it should enter into an agreement satisfactory to the labor organizations.

Each and every of the foregoing publications, statements and acts of the said Frank Morrison was in wilful violation of the injunction decree of this court in the said equity cause of the Buck's Stove & Range Company vs. The American Federation of Labor, Frank Morrison and others, No. 27,305, was done for the purpose of inducing others to disregard and violate the injunction of this court, and thereby to defeat it, and, in each of the said publications, statements and acts, the said Frank Morrison is guilty of contempt of the court, and has subjected himself to due punishment therefor.

As in the case of Samuel Gompers, the said Frank Morrison alleged, and it may be, although gravely in error, he then believed, that the injunction was not binding upon him because of what he claimed to be his constitutional right of free speech and a free press; and it may be, now that this contention upon his part, always indefensible, has been determined by the Supreme Court of the United States to be unfounded, he may be prepared to make such due acknowledgment, apology and assurance of future submission to the Court as may meet the necessary purpose of vindicating its authority and that of the law. Should such acknowledgment, apology and submission not be forthcoming, after due notice and opportunity, the course necessary to be pursued to maintain its dignity, and due respect for and obedience to the law, is respectfully submitted to the Court for its consideration.

JOSEPH J. DARLINGTON,
DAN'L DAVENPORT,
JAMES M. BECK,

Committee.

250 DISTRICT OF COLUMBIA, ss:

I, Daniel Davenport, on oath say that I have read the foregoing Report signed by Joseph J. Darlington, James M. Beck, and myself, Committee, and know the contents thereof; that this affidavit is made by me on behalf of the said Joseph J. Darlington and James M. Beck, as well as on my own behalf, because of the fact that the said matters and things in the said Report set forth are more largely within my personal knowledge; that the matters and things set forth in the said Report as of personal knowledge are true, and that those set forth upon information and belief I believe to be true.

DAN'L DAVENPORT.

Subscribed and sworn to before me this 24th day of June, A. D. 1911.

[SEAL.]

IRWIN H. LINTON,
Notary Public, D. C.

EXHIBIT "A."

In the Supreme Court of the District of Columbia.

Equity No. 27305.

THE BUCK'S STOVE AND RANGE COMPANY

VS.

THE AMERICAN FEDERATION OF LABOR et al.

This cause coming on to be heard upon the petition of the complainant for an injunction pendente lite as prayed in the bill, and the defendants' return to the rule to show cause issued upon the said petition having been argued by the solicitors for the respective parties, and duly considered, it is thereupon by the court, this 18th day of December, A. D. 1907. Ordered that the defendants The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. 251 Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Doppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails or in any other manner, any copies or copy of the American Federationist, or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize", or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with 252 any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention of complainant's customers, or of

dealers, or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling, or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other states and territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid.

And it is further Ordered by the court that this order shall
253 be in full force, obligatory and binding upon the said defendants, and each of them, and their said officers, members, agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them, upon the service of a copy hereof upon them or their solicitors or solicitor of record in this cause; provided the complainant shall first execute and file in this cause, with surety or sureties to be approved by the court or one of the justices thereof, an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitable suing out this injunction, and stipulating that the damages may be ascertained in such manner as the justice of this court shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

ASHLEY M. GOULD, *Justice*.

EXHIBIT "B."

Decree.

Filed March 23, 1908.

In the Supreme Court of the District of Columbia.

No. 27305. Equity.

BUCK'S STOVE & RANGE COMPANY

VS.

THE AMERICAN FEDERATION OF LABOR et al.

The above entitled cause coming on at this time for final hearing, and having been submitted to the court by the respective parties, through their solicitors, upon the pleadings and the evidence, and having been duly considered, it is thereupon by the court this 23rd day of March, A. D. 1908, adjudged, ordered and decreed
254 that the defendants The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, perpetually restrained and enjoined from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing or distributing through the mails, or in any other manner, any copies or copy of the American Federationist, or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize" or the "Unfair" list of the defendants, or any of them, their agents,
servants, attorneys, confederates, or other person or persons
255 acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar

import, and from publishing or otherwise circulating, whether in writing or orally, any statement or notice of any kind or character whatsoever, calling attention to the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "Unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening, or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining with the complainant's business, trade or commerce, whether in the State of Missouri, or in other states and territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person

256 or persons, company or corporation to do or cause to be done any of the acts or things aforesaid. And it is further adjudged, ordered and decreed that the complainant recover against the defendants the costs of this suit, to be taxed by the clerk, and that it have execution therefore as at law.

HARRY M. CLABAUGH,

Chief Justice.

Rule to Show Cause.

Filed June 26, 1911.

* * * * *

Upon consideration of the report, this day filed, of Joseph J. Darlington, Daniel Davenport and James M. Beck, the Committee appointed by the court's order of May 16th, 1911, to inquire whether the above named Frank Morrison has been guilty of contempt in wilfully violating the terms of the injunctions issued by this court in the cause of the Buck's Stove and Range Company vs. The American Federation of Labor, Frank Morrison et al., No. 27305 Equity, and upon consideration of the charges of contempt filed therewith, it is thereupon by the court this 26th day of June, A. D. 1911, ordered that the above named Frank Morrison show cause on or before the 17th day of July, A. D. 1911, at 10 o'clock a. m. in Equity Court No. 1, provided a copy of this rule and of said charges shall be served on him on or before the 6th day of July, 1911, why he should not be adjudged to be in contempt of the

orders and decrees of the court in the said equity cause, and be punished for the same.

WRIGHT, *Justice*.

257

Marshal's Return.

Served copy of within rule to show cause on Frank Morrison personally June 26, 1911.

AULICK PALMER, *Marshal*,
S.

(Indorsed on back.) Service of rules to show cause of like tenor to the within is hereby accepted for Samuel Gompers and John Mitchell this 7th day of July, 1911, as if made personally upon them. Ralston, Siddons & Richardson, Attorneys for said Gompers and Mitchell.

Motion to Dismiss for Want of Jurisdiction.

Filed July 17, 1911.

* * * * *

Now comes Frank Morrison by Alton B. Parker, Ralston, Siddons and Richardson, his attorneys, and moves the Court that this proceeding be dismissed, and for cause says that the order of injunction which is alleged to have been violated by this defendant was not made by Justice Wright, before whom this proceeding is brought, that the said Justice Wright was not when the said order was made a member of that branch of the Supreme Court of the District of Columbia by which the said order was made, and is not now a member thereof, and that the said Justice Wright has no jurisdiction or authority to preside over this proceeding, and that this proceeding is not properly before the said Justice Wright.

ALTON B. PARKER,

RALSTON, SIDMONS & RICHARDSON,

Attorneys for the Defendant Frank Morrison.

Dated July 17, 1911.

258

Motion for Bill of Particulars.

Filed July 17, 1911.

* * * * *

Now comes the respondent, by Alton B. Parker, and Ralston, Siddons & Richardson, his attorneys, and moves the court for a Bill of Particulars of the alleged contempts charged against him, and prays that the complainant committee may be required to furnish the details of their complaint as follows:

Under Paragraph I.

The dates when, places where, and persons to whom said Frank Morrison caused or permitted copies of the printed proceedings of the Norfolk Convention of 1907 to be circulated and distributed.

Under Paragraph II.

The dates when, the places where and the persons to whom the said Frank Morrison caused to be printed or circulated the paper designated as an "Urgent Appeal," etc., either separately, or in the February, 1908, Federationist.

Under Paragraph III.

The dates when, the places where and the persons to whom the said Frank Morrison caused or assisted in causing copies of the February, 1908, issue of the American Federationist to be circulated.

Under Paragraph IV.

The dates when, the places where and the persons to whom the said Morrison circulated or caused to be circulated copies of the American Federationist for each of the months of January, February, March, April, May, June and September, 1908.

RALSTON, SIDDOXS & RICHARDSON,

Attorneys for Frank Morrison.

259 DISTRICT OF COLUMBIA, ss:

Frank Morrison, being first duly sworn, on oath says that he is a respondent in the above entitled cause; that he has carefully read so much of the report as has been served upon him; that he is charged therein in vague terms, and to unknown persons and at unspecified times with contempt of the order of the court; that he is unable properly to plead herein unless the charges be made definite as above moved; that unless so made definite, he will be unable on trial to present in many, if not all, instances, controverting testimony; that to the best of his recollection he circulated nothing in conscious violation of the orders of the court.

FRANK MORRISON.

Subscribed and sworn to before me, this 17th day of July, A. D. 1911.

J. R. YOUNG, *Clerk.*
By E. J. McKEE, *Ass't C'k.*

Motion to Set Aside Report.

Filed July 17, 1911.

* * * * *

Now comes Frank Morrison, by Alton B. Parker, Ralston, Siddons and Richardson, his attorneys, and moves the Court to set aside the report herein submitted by Messrs. Daniel Davenport, J. J. Darlington and James M. Beck, Committee, and for cause says that the order referring the cause to said Committee called for the exercise of judicial discretion, and that no one of said Committee was in a position to exercise the same, and did not exercise it; that
 260 every one had repeatedly, and prior to his appointment, expressed in positive terms his conviction of the guilt of the respondents of the charges which they formulated subsequently against them; that as evidence thereof, he attaches hereto and makes part hereof, and marks Exhibit "A", a few from among many citations which might be made from the stenographic report of proceedings in the contempt case of Buck's Stove and Range Co. vs. Gompers, et al., showing expressions of opinion by said Committee.

Moreover the members of the said Committee while appearing on the record for the Buck's Stove and Range Company in the suit out of which these proceedings grow, were in fact employed by and paid by the American Anti-Boycott Association and the National Manufacturers Association. The settlement, therefore, between the Buck's Stove and Range Company and the American Federation of Labor and Messrs. Gompers, Mitchell and Morrison, did not set them free from the legal and moral obligation to carry on the *prosecution* for the benefit of the National Associations compensating them; hence their action was not and could not be judicial. These facts we offer and expect to prove by Mr. Davenport and other members of the Committee.

FRANK MORRISON.

DISTRICT OF COLUMBIA, ss:

Frank Morrison, being first duly sworn, on oath says that he has read the foregoing motion and exhibit by him subscribed, and knows the contents thereof, that the same are true of his own knowledge, except as to the matters therein stated on information and belief, and that as to the same, he believes them to be true.

FRANK MORRISON.

261 Subscribed and sworn to before me this 17th day of July,
 A. D. 1911.

J. R. YOUNG, *Clerk*,
 By E. J. McKEE, *Ass't Clk.*

EXHIBIT "A."

In Argument before Justice Gould, September 9, 1908, on Rule as to Contempt.

Mr. Davenport on page 14 of Record says:

"A gentleman, it appears — like to have Your Honor believe that he was in a comatose state when that rank defiance of this Court and insult to this Court was committed in his presence and through this instrument."

This statement has reference to Mr. Mitchell.

Mr. Darlington in presenting contempt case before Judge Wright, November 16, 1908, after reading verbatim the injunction at page 6 of the record, says:

"That sounds like a good deal of detail; and yet the present condition of the case shows that none of the details were superfluous. Everyone of those details has been violated, as we claim, and it is practically undisputed in the case."

Pages 100 and 101, "As I say, so far as the facts are concerned, the mere statement of them, it seems to me, appears to be conclusive, that we have had here the most deliberate, persistent, defiant contempt of an Order of the Court which the records of judicial proceedings will point us to, or which could be imagined."

Mr. Beck in presenting contempt case on November 16, 1908, at page 157 of the record says:

"I am not going, because your Honor has been most patient in this case, in any detail unto the testimony in the case; because I have a reasonable confidence that having read the injunction your Honor can, from the answer of these respondents alone, pass to judgment that they are guilty and flagrantly guilty of the contempt wherewith they are charged."

Page 158, "Because while of course the question of what judgment shall be pronounced by the Court is wholly for the Court, it seems to me that the Court is entitled to the views of Counsel as to whether this is a case where men have gone ahead under a mistaken sense of right under circumstances that palliate while they do not wholly excuse, or whether it be not the fact that here is a clear, conceded, flagrant, deliberate, avowed defiance of the order of this Court as well as a deliberate insult to its authority."

Page 165, "Unfortunately, as far as I can see, no such view is possible; because in this case, before ever Judge Gould pronounced his injunction, there was a deliberate, avowed statement of these men, notably of Mr. Gompers and Mr. Mitchell, that if any injunction were issued against the boycott they would not obey it. In other words, they asserted their rights to defy the decrees of a Court of this country, and they would take the consequence if need be."

Page 166, "First let me take the gentleman who, when he goes to New York and meets with the Civic Federation and other distinguished philanthropists, is always a law-abiding citizen, and who, when with his own organization, is never law-abiding—Mr. John Mitchell."

263 Page 179. "While the application for the injunction was pending Mr. Gompers took another very important public occasion to breathe his defiance to the action of this Court, which he clearly anticipated was about to be made."

Page 180. "Of course I might here interject the remark that that which he has said is in the highest degree both libe-ous and seditious; and although his qualification is not needed for the assertion of our rights to our injunegion, yet if the action of himself and his associates is not deliberate sedition, then I do not understand the meaning of the word 'sedition.'"

Page 182. "There is the deliberate statement that no matter what the injunction might be, they would have an absolute right to go ahead and disregard it. If that is not pretty near sedition, just as much as the action of the State of South Carolina in nullifying the Federal Constitution, I do not understand what sedition is. And I am not at all sure that the sedition of the "master of a million minds," in this intangible and subterranean way, is not a great deal more dangerous than an armed revolt. An armed revolt you can put down; but the subterranean working of this conspiracy is, to some extent, and perhaps to a very considerable extent, beyond even the remedial power of the Courts."

Page 183. "The result was he resorted to perjury—flat perjury. In fact, this record is slimy—it is trailed over with the slime of perjury. That is a pretty harsh term, but it is true. They commenced with perjury; they filed an answer in this Court in which they stated that they had not since the suit was brought put the 264 Buck's Shave & Range Company on the 'unfair' list, and they had no intention to do it. And yet the very numbers, the October and November, was it not, and December numbers?—All three of them had the unfair list."

Page 191. "He allowed those thousand copies to go all through the country; and in that way, by passive action, he violated the injunction as to those copies."

Page 193. "And therefore I think it is a fair argument that if Mr. Gompers, in anticipation of our entering in the bond, did that which made the injunction inoperative by consequences which, occurring after the bond was entered, had their original causation in Gompers' acts before the bond was entered, he committed a contempt of Court."

Page 209. "And that resolution surpasses all previous attempts (unless I except Mr. Gompers' profane expression) to insult this Court and to affront its dignity; because, instead of simply stating: "We are going to keep up the boycott," it deliberately draws the issue between this Court and this self constituted Court of Labor."

Motion to Set Aside Return of Service.

Filed July 17, 1911.

* * * * *

Now comes the respondent, Frank Morrison, and moves to set aside the return of service upon him as being insufficient under the terms

of the rule, and for cause says that there has not been served upon him any copy of verified charges, nor of exhibits made part thereof.

FRANK MORRISON,
By RALSTON, SIDDONS &
RICHARDSON,

His Attorneys.

265 DISTRICT OF COLUMBIA, ss:

Frank Morrison, being first duly sworn, on oath says that he is the respondent in the above entitled cause; that on June 26, 1911, there was served upon him by a Deputy Marshal of the District of Columbia, copy of a rule to show cause, entitled as above, and at the same time he was handed, as in the same case, a copy of what purported to be a report, but which was not verified, it not appearing to have been sworn to by any one; that altho' he found on inspection of the report reference to exhibits which should have been attached thereto, no copies of such exhibits were served upon him.

JACKSON H. RALSTON.

Subscribed and sworn to before me, this 17th day of July, A. D. 1911.

J. R. YOUNG, *CTk.*
By E. J. McKEE, *Ass't CTK.*

Affidavit Opposing Motion for Bill of Particulars.

Filed July 24, 1911.

* * * * *

DISTRICT OF COLUMBIA, ss:

I, Daniel Davenport, on oath say that, under the proceedings in contempt instituted upon the petition of the Buck's Stove & Range Company, filed in Equity cause No. 27,305, filed on July 20, 1908, the above named respondent, Frank Morrison, testified in my hearing, and as per his deposition duly filed in this cause,

266 I. That he, with others, had caused 9,000 copies of the proceedings of the Norfolk Convention of 1907 to be printed; that they had sent out 7,237 of these copies; that "we got them out just as rapidly as we could," and that "they were all sent out after December 31st," and that he "should judge they would be all out surely during the month of January," and that they were sent out to the affiliated organizations of the American Federation of Labor, "Nationals, City Centrals and Local Unions," and that these copies were distributed by him to the secretaries of the said affiliated organizations for their information in regard to the various reports.

II. With respect to the printing and circulation of the paper designated as "An Urgent Appeal," and its publication in the February, 1908, Federationist, the said respondent further testified in my presence, as per his deposition filed in the said cause, that between 25,000

and 28,000 copies thereof were sent out subsequently to January 24, 1908, to the secretaries of the 27,000 local affiliated unions of the American Federation of Labor; that he read the editorial in the February, 1908, Federationist which was appended to the "Urgent Appeal," and knew that it was appended, but sent the "Urgent Appeal" out; that the circular was authorized by the Council, of which the said respondent was a member, that it "went out to explain why we wanted the money," and that "they were sent under my direction."

267 III. With respect to the editorial appended to the "Urgent Appeal," the said respondent further stated in his answer to the rule to show cause in the said contempt proceedings, under his oath, that he admitted the publication thereof, and that it was published "in good faith and for the better understanding of the officials of the American Federation of Labor, who were entitled to know, as definitely as they might, to what extent they were affected by the order of court passed in the District of Columbia."

IV. I further on oath say that, as will appear by reference to the answer of the above named respondent to the rule upon him to show cause in the said contempt proceedings, he admitted under oath that the copies of the American Federationist referred to in the petition under which the said rule to show cause against him issued, which included the copies of the said Federationist for the months of January, February, March, April, May, June and September, 1908, had been circulated and distributed in large numbers by him.

This affiant accordingly submits to the court whether, in view of the foregoing facts, the respondent is not in a better position than the Committee of which affiant is a member, to ascertain the particulars, and each of them, called for by his motion for a bill of particulars.

DANIEL DAVENPORT.

Subscribed and sworn to before me this 24th day of July, A. D. 1911.

J. R. YOUNG, *Cpk.*
By F. E. CUNNINGHAM, *Ass't Cpk.*

268

Affidavit of Daniel Davenport.

Filed July 24, 1911.

* * * * *

DISTRICT OF COLUMBIA, ss:

I, Daniel Davenport, on oath say that I am, and for the past eight years have been, employed by the American Anti-Boycott Association as its counsel, and that in that capacity I was employed by it to assist in the presentation of the suit of the Buck's Stove & Range Company for injunction against the American Federation of Labor, et al., in Equity Cause No. 27,305 in the Supreme

Court of the District of Columbia, but that my connection with that controversy, and that of the American Anti-Boycott Association according to my best knowledge, information and belief, terminated with the decision in that litigation by the Supreme Court of the United States at its October, 1910, term, and that I neither have, nor have had, any interest or connection whatsoever with the pending proceedings in contempt against the above named respondent other than such as has devolved upon me by my appointment under the order of this Court bearing date the 16th day of May, A. D. 1911, as a member of a Committee to ascertain and report to the court whether there was reasonable cause to believe respondent guilty of contempt in the premises, and, in that event, to formulate and prosecute charges of contempt against him. I further on oath say that I am not, and never was, counsel for the National Manufacturers' Association, in any matter whatsoever, and, with respect to the Buck's Stove & Range Company litigation, that I have never been
269 employed by it for any service, or in any way in connection therewith.

So far from maintaining any hostile bias or prejudice against the respondent, I shall be more than pleased by such acknowledgment by him of his error in disobeying the injunctions of the court, and by such assurance of his submission to the orders and decree of the court in the future, as in the judgment of the court may be a sufficient vindication of its authority and of the majesty of the law, and may render unnecessary the further prosecution of respondent because of his said disobedience. I am more than willing to be relieved of the duty of prosecuting the said charges, by the substitution of some other member of the Bar in my stead for that purpose, if the Answer of the respondent shall render further prosecution necessary, and it shall be agreeable to the court to make such substitution.

DANIEL DAVENPORT.

Subscribed and sworn to before me this 24th day of July, A. D. 1911.

J. R. YOUNG, *CTK.*
By F. E. CUNNINGHAM,
Ass't CTK.

Affidavit of Joseph J. Darlington.

Filed July 24, 1911.

* * * * *

DISTRICT OF COLUMBIA, ss:

I, Joseph J. Darlington, with reference to a certain affidavit of the above respondent filed in this cause in support of a motion to set aside the report herein submitted by Daniel Davenport,
270 James M. Beck and myself, Committee, on oath say that my employment as counsel for the Buck's Stove and Range Company in its litigation with the American Federation of Labor and

others was effected by James M. Beck, Esq., one of the counsel for that Company; that, at the time of said employment and for many months afterwards, I was not aware of the existence of any such organization as the American Anti-Boycott Association or the National Manufacturers' Association; that, in the course of said litigation, I received several remittances in aid of its prosecution in the form of checks, drawn by "Henry A. Potter, Treasurer," which checks, at a comparatively late period in the progress of the litigation, I learned had been drawn by him in his capacity as Treasurer of the Anti-Boycott Association, under an agreement between that Association and its members by which it was obligated to defray, either wholly or in part, the expenses of the litigation in which they might become involved, growing out of boycotts; that I have at no time had any conferences or communications with either the American Anti-Boycott Association or with the National Manufacturers' Association, and that I have received no instructions, advices or suggestions of any kind from either of them, directly or indirectly, in regard to the conduct of the said litigation, my conferences, communications and instructions in that regard being wholly with the Buck's Stove and Range Company, through its President; that the services which I undertook to render in the said litigation, and my connection therewith, completely terminated with the arguments therein before the Supreme Court of the United States at its October, 1910, Term; that, neither at the time of my appointment as a member

271 of the Committee in this proceeding to report to the court whether there was reasonable cause to believe that the respondent was guilty of contempt of the court in the violation of its injunctions, and in that event to prosecute a charge of contempt against him, nor subsequently thereto, was I, or have I been, in the employ, for any purpose, of the American Anti-Boycott Association, the National Manufacturers' Association or the Buck's Stove & Range Company, and that, contrary to the allegation of the said affidavit, my appearance and participation in the arguments before the Supreme Court of the United States in the matter of the said litigation was pursuant to instructions of the Buck's Stove and Range Company, through its President, that its adjustment with the American Federation of Labor was not intended to interfere in any manner with the prosecution of the said litigation. So far from being biased or prejudiced against the respondent, or hostile to him, I cordially united in the suggestion of the Committee in their Report that since the Supreme Court of the United States has now decided adversely to the position contended for by him, and in view of which he theretofore had contended that he was rightfully entitled to disobey the injunctions of this court, he might be willing to admit his error and give assurances of future submission to the court, which suggestion was made in the hope that, as a law-abiding citizen, the respondent would be willing to accept the decision of the highest tribunal known to the Constitution and laws of his Country as conclusive of the question, and thereby render further prosecution against him unnecessary. My appointment as a member of the Committee was in no manner in pursuance of any application or desire upon my part, and, while ready to perform any duty to which I

am assigned by the Court, I have at all times been more than willing
 272 that some other member of the Bar should be designated in
 my stead for the prosecution of the charges of contempt
 against the respondent.

The connection of Mr. James M. Beck, who is now absent from
 the country, with the litigation between the Buck's Stove and
 Range Company and the American Federation of Labor, the re-
 spondent and others, terminated with his argument of the contempt
 proceedings before the Court of Appeals, in the Month of April,
 1909, since which time, according to my best knowledge, information
 and belief, Mr. Beck has sustained no professional or other relation
 toward the Buck's Stove and Range Company, the American Anti-
 Boycott Association or the National Manufacturers' Association, if,
 in fact, he ever sustained any relation to any of the said parties other
 than the said Buck's Stove and Range Company.

JOSEPH J. DARLINGTON.

Subscribed and sworn to before me this 24th day of July, A. D.
 1911.

J. R. YOUNG, *Clk.*
 By F. E. CUNNINGHAM,
Ass't Clk.

Pleas.

Filed July 24, 1911.

* * * * *

Frank Morrison, respondent, for plea to the charges against him,
 says—

1. That he is not guilty of them, or any of them.
2. That the matters and things complained of in paragraphs one
 to four inclusive did not occur within three years before the bring-
 ing of this action.
- 273 3. That the matters and things complained of in para-
 graphs one to four inclusive occurred, if at all, as the court
 well knew, more than three years before the commencement
 of this action, and that any complaint with relation thereto is barred
 because of laches on the part of the court or judges, assumed or
 alleged to have been affected thereby.
4. That the delay in the presentation of the charges in this action
 has been so unreasonable that this respondent should not be called
 upon to answer them.

ALTON B. PARKER,
 RALSTON, SIDMONS &
 RICHARDSON,
Attorneys for Respondent.

Order Appointing C. R. Wilson to Assist in Presenting Charges.

Filed July 24, 1911.

* * * * *

This cause coming on to be heard further upon the motion of the respondent to amend the order "empowering J. J. Darlington, Daniel Davenport and James M. Beck, Esqrs. to prosecute the charges of contempt against this defendant be amended by striking out the names of the said Darlington, Davenport and Beck and substituting the Attorney of the United States for the District of Columbia," and the Court having heard read the communication of Hon. Clarence R. Wilson, United States District Attorney herein this day filed, and being of the opinion that it is without power to designate Mr. Wilson to take a part in his official capacity: it is ordered that Hon. Clarence R. Wilson, a member of the Bar, be and he is hereby authorized and designated together with Messrs. Darlington, Davenport and Beck to present to the Court the said Charges, according to right and justice in the premises.

274

WRIGHT.

Motion to Amend Order Appointing Prosecuting Attorneys.

Filed July 24, 1911.

* * * * *

Now comes Frank Morrison by Alton B. Parker, Ralston, Siddons and Richardson, his attorneys, and moves the Court that the order heretofore made in this proceeding empowering J. J. Darlington, Daniel Davenport and James M. Beck, Esqs., to prosecute the charges of contempt against this defendant be amended by striking out the names of the said Darlington, Davenport and Beck and substituting the Attorney of the United States for the District of Columbia, and for cause says that the said Darlington, Davenport and Beck, by reason of their employment as attorneys for the plaintiff in the suit of the Buck Stove and Range Company against Gompers and others, are necessarily biased and prejudiced against this defendant and his co-defendants and are not properly qualified to prosecute the said charges of contempt, and that their appointment by the Court to prosecute the said charges was unlawful and contrary to a statute expressly providing that criminal prosecutions in the District of Columbia shall be conducted by the Attorney of the United States for the District of Columbia or his assistants.

ALTON B. PARKER,
RALSTON, SIDMONS &
RICHARDSON,

Attorneys for the Defendant Frank Morrison.

Dated July 17, 1911.

13-2477a

Motion to Require Sworn Answer to Charges.

Filed July 27, 1911.

* * * * *

Now comes Joseph J. Darlington, Daniel Davenport, James M. Beck and Clarence R. Wilson, Committee appointed by the Court to prosecute charges for contempt against the above named respondent, and move the court for an order requiring the said respondent, at his election, either to answer under oath the charges of contempt filed against him in the above cause on the 26th day of June, 1911, or to make specific answer, under oath, to the interrogatories in relation thereto annexed to and made a part of this motion:

JOSEPH J. DARLINGTON,
DAN'L DAVENPORT,

For Committee.

Messrs. Alton B. Parker and Ralston & Siddons, Solicitors for Respondent Frank Morrison:

Please take notice that on Monday next, the 31st day of July, 1911, at 10 o'clock a. m., or so soon thereafter as counsel may be heard, the above motion will be presented to the court for its action.

JOSEPH J. DARLINGTON,
DAN'L DAVENPORT,

For Committee.

Service of the above motion and notice, with the accompanying interrogatories, accepted this 27th day of July, 1911.

RALSTON, SIDDONS & RICHARDSON,

*For Frank Morrison.**Interrogatories.*

Filed July 27, 1911.

* * * * *

1. State whether, on the 23rd day of December, 1907, and thence hitherto, you have held the office of Secretary of the American Federation of Labor.

2. State whether subsequently to the said 23rd day of December, 1907, you, in your capacity as Secretary of the American Federation of Labor, received a large number, and if so how many, copies of the printed proceedings of the 1907 Convention of the American Federation of Labor, held at Norfolk, Virginia, and, if so, whether you caused or permitted a large number, and if so how many, copies of the said proceedings to be published, circulated or distributed throughout the United States.

3. State whether, as alleged in Paragraph I of the charges against you filed in the above cause on the 26th day of June, the said printed

proceedings referred to the name of the Buck's Stove and Range Company in connection with the "We Don't Patronize" or "Unfair" list of the American Federation of Labor, and contained resolutions adopted by the American Federation of Labor at its said Convention, requesting each central body affiliated with the American Federation of Labor to appoint a committee to conduct and manage a "campaign of education" among the membership as well as among dealers in stoves in their locality, and thoroughly inform them as to the attitude of J. W. Van Cleave, the President of the Buck's Stove and Range Company toward organized labor, which resolution further required that the committees of the several central
 277 bodies so appointed should report to the officers of the American Federation of Labor on the first day of each month the progress of the said "Campaign of Education," together with a complete list of all dealers in their locality who were handling or dealing in the product of the Buck's Stove and Range Company, and that all commissioned organizers of the American Federation of Labor should report to the American Federation of Labor the progress made each month in the said "Campaign of Education" by the different committees of the several central bodies in their respective Districts, and to lend such aid to all committees as lay in their power.

4. State whether, on or about the 24th day of January, 1908, you united with Samuel Gompers and others in printing and widely circulating a large number, and if so, how many, copies of a paper designated an "Urgent Appeal for Financial Aid in Defence of Free Press and Free Speech," substantially as set forth in Paragraph II of the said charges of contempt filed against you in the above cause on June 26, 1911.

5. State whether you, further, caused or permitted the said "Urgent Appeal" to be printed in the February, 1908, American Federationist, as set forth in the second paragraph of the said charges.

6. State whether you caused or assisted in causing to be re-printed and to be circulated with the said "Urgent Appeal" thousands of copies, and if so how many, of an editorial in the February, 1908, Federationist, containing the language set forth in the said second paragraph of the charges against you.

7. State whether you caused or assisted in causing thou-
 278 sands of copies, and if so how many, of the editorial in the American Federationist set forth in Paragraph III of the charges of contempt against you filed on June 26th, 1911, to be re-printed for the purpose of circulation, and to be widely circulated throughout the various States and Territories of the United States in conjunction with the said "Urgent Appeal."

8. State whether you aided and co-operated with Samuel Gompers and others in circulating or in causing to be circulated, subsequently to December 23, 1907, many copies, and if so how many, of the American Federationist for the months of January, February, March, April, May, June and September, 1908, or any of them, each of which copies contained references to the Buck's Stove and Range Company in connection with the "We Don't Patronize" or

"Unfair" list of the American Federation of Labor, and contained editorial and other references to the said Buck's Stove and Range Company in connection therewith, and to the boycott declared by the American Federation of Labor against it and to the desirability of continuing to prosecute the same against it, notwithstanding the said injunction, until it should enter into an agreement satisfactory to the labor organizations.

JOSEPH J. DARLINGTON,

For Committee.

Order Fixing Time within Which to Answer Charges.

Filed July 31, 1911.

* * * * *

Upon consideration of the motion of Joseph J. Darlington, Daniel Davenport, James M. Beck and Clarence R. Wilson, Committee, filed herein on the 27th day of July, A. D. 1911, requiring 279 the above named respondent Frank Morrison to answer under oath the charges of contempt filed against him in the above entitled cause on the 26th day of June, 1911, or to make specific answer under oath to the interrogatories in relation thereto annexed to the said motion, and the same having been argued on behalf of the said Committee and by the solicitors of the said respondent, it is by the Court, this 31st day of July, A. D. 1911, ordered that the said Frank Morrison file in this cause within 20 days after the date hereof, such answer, affidavit or other statement or statements under oath, if any, as he may desire to offer to the court in denial of or reply to the said charges of contempt, under oath, so filed against him in the above entitled cause, or tending to show why he should not be adjudged to be in contempt of the orders and decrees of this Court in Equity Cause No. 27,305 as therein charged, and be punished for the same.

WRIGHT.

Plea of Former Jeopardy.

Filed July 31, 1911.

* * * * *

Now comes the respondent, Frank Morrison, in his own person and prays judgment of the charges filed against him and that they may be quashed because he says that charges of the same tenor and effect were preferred against him by the Buck's Stove and Range Company in Equity cause No. 27,305, and filed July 20, 1908, and were prosecuted before the Supreme Court of the District of Columbia, sitting in Equity in said cause, and that he was put upon 280 his trial before said court and a hearing was had thereon, and the court adjudged him guilty thereof, and sentenced him to a term of six months in jail, by a decree dated December 23,

1908, and this he is ready to verify, and wherefore, he prays judgment of the charges filed against him, and that the same may be quashed.

FRANK MORRISON.

Subscribed and sworn to before me this 25th day of July, 1911.

[SEAL.]

ROBERT A. BOSWELL,
Notary Public, D. C.

Answer.

Filed August 19, 1911.

* * * * *

Frank Morrison, for answer to the charges against him, says—

1. That he is not guilty of them or any of them.

2. That the matters and things complained of in paragraphs one to four inclusive, and in each of said paragraphs, did not occur within three years before the bringing of this action.

3. That the matters and things complained of in paragraphs one to four inclusive, and in each of them, occurred, if at all, as the court well knew, more than three years before the commencement of this action, and that any complaint with relation thereto is barred because of laches on the part of the court or judges assumed or alleged to have been affected thereby.

281 4. That the delay in the presentation of the charges in this action has been so unreasonable that this respondent should not be called upon to answer them.

FRANK MORRISON.

DISTRICT OF COLUMBIA, ss:

Frank Morrison, being first duly sworn, on oath says that he has read the foregoing answer by him signed and knows the contents thereof. That the same are true to the best of his knowledge and belief, except as to the matters and things therein stated upon information and belief, and that as to the same, he believes them to be true.

FRANK MORRISON.

Subscribed and sworn to before me this 28th day of July, A. D. 1911.

[SEAL.]

ROBERT A. BOSWELL,
Notary Public.

282

Motion to Dismiss Charges.

Filed October 12, 1911.

* * * * *

Now comes Frank Morrison, respondent, by Ralston, Siddons and Richardson, and Alton B. Parker, his attorneys, and moves the Court to dismiss the information and charges filed against him, and for cause says:

1. There has been no proper replication filed to the plea of the statute of limitations presented by him, it appearing upon the face of the said information and charges that many of the actions complained of therein, occurred more than three years before the filing of said information and charges.

2. No pleading has been filed herein offering any justification or excuse for the laches in bringing this proceeding on the part of the Court assumed or alleged to have been treated with contempt by the actions with which respondent is charged, in the aforesaid information and charges, as set forth in this respondent's answer filed herein.

3. No pleading of any kind has been filed to account for the unreasonable delay in the institution of these proceedings, as alleged in this respondent's answer filed herein.

FRANK MORRISON,
By ALTON B. PARKER,
RALSTON, SIDDONS & RICHARDSON,
Attorneys.

Service accepted Oct. 12 '11.

J. J. DARLINGTON,
For Committee.

283 *Order Overruling Motion to Dismiss Proceeding, etc.*

Filed November 23, 1911.

* * * * *

Upon consideration of the motion of the respondent in the above entitled cause to dismiss the proceedings therein, and of the motion made by the committee to appoint an examiner to take the testimony in the cause, and after argument on behalf of the committee and by counsel for the respondent and consideration thereof, it is by the court, this 23rd day of November, 1911, ordered:

1. That the motion of the respondent to dismiss the proceedings in this case against him be, and the same hereby is, denied.

2. That three days be allowed the committee and counsel for the respondent within which to agree upon a commissioner to take testimony in the cause; it being further ordered that the examination of witnesses in open court may be allowed with respect to any witnesses for whose examination in such manner application shall be made to the court.

WRIGHT.

To the making of the above order and to each and every paragraph therein in their several order- the above named respondent by his counsel at the time in open court objects and excepts.

284

Stipulation to Refer Cause to Examiner.

Filed December 9, 1911.

* * * * *

It is hereby agreed by the Solicitors in this proceeding that the same may be referred to Albert Harper, Esq., United States Commissioner, for the purpose of taking evidence therein pursuant to the order of the Court passed in said proceeding on the 23d day of November, 1911, the Solicitor for the Respondent entering into this stipulation without prejudice to the exceptions noted by him to the said order.

J. J. DARLINTON, *On Behalf of Committee.*
RALSTON, SIDDOONS & RICHARDSON,
Solicitor for Respondent.

Order.

Filed December 15, 1911.

* * * * *

It is by the court this 15th day of December, 1911, after hearing counsel for the respective parties, ordered that the above proceeding be, and the same hereby is, referred to Albert Harper, Esq., United States Commissioner, for the purpose of taking such testimony as may be adduced before him by the Committee and the respondent, respectively; that the Committee have thirty days from the date hereof within which to take testimony in chief in support of the charges preferred by it against respondent, that the respondent have thirty days after the conclusion of the testimony on behalf of the Committee within which to take testimony on his behalf in reply, and that the Committee have ten days after the conclusion of the testimony on behalf of the respondent within which to take testimony in rebuttal, this order to be without prejudice to the right of either party to take the depositions or the affidavits, as they may be advised, of witnesses residing beyond the District of Columbia, within the time herein limited for taking testimony in the cause, or to apply to the court for leave to examine in open court any witness or witnesses whose testimony either side may desire to have taken in that manner.

To the granting of the above order and to each clause thereof, permitting testimony to be taken out of open court or by a commissioner or by affidavits or in any manner out of the District of Columbia the respondent, by Ralston, Siddons & Richardson, his attorneys, in open court and at the time of its granting objects and excepts.

WRIGHT.

Notice of Taking of Testimony.

Filed December 26, 1911.

* * * * *

Messrs. Ralston & Siddons, Counsel for Respondent.

GENTLEMEN: Please take notice that on Saturday, the 30th day of December, 1911, at 10:30 o'clock A. M., in Equity Court No. 2, we shall proceed to take testimony in open court in support of the charges against the above respondent contained in the Report of the Committee, filed in the above entitled cause.

J. J. DARLINGTON.
JAMES M. BECK.
DANIEL DAVENPORT.
CLARENCE R. WILSON.

286 Without waiving exceptions service of above accepted Dec.
26, 1911.

RALSTON, SIDDONS & RICHARDSON.
Att'ys for Respondent.

Order Appointing Stenographer to Report Testimony in Open Court.

Filed December 30, 1911.

* * * * *

It is by the Court this 30th day of December, 1911, ordered that Albert Harper, Esq., be, and he hereby is, appointed stenographer to report the testimony of such witnesses in this proceeding as shall be examined in open court, and that the depositions of such other witnesses as may be examined by either of the parties thereto shall be taken before him in his capacity as an Examiner in Chancery of this Court.

WRIGHT, *Justice.*

Objected and excepted to in open court by respondent as far as applicable as to his appointment as Commissioner.

RALSTON, SIDDONS & RICHARDSON.
Att'ys for Respondent.

Motion for Signing of Certain Orders Nunc Pro Tunc.

Filed March 19, 1912.

* * * * *

Messrs. Daniel Davenport, J. J. Darlington, James M. Beck, and Clarence Wilson, Committee:

287 You will please take notice that on Monday, March 11,
1912, at the opening of court, or as soon thereafter as the same may be heard, the undersigned will call to the atten-

tion of the Court the matters and things hereinafter referred to, relying, in their presentation, upon the record of proceedings, a copy of which is in your possession.

RALSTON, SIDDON & RICHARDSON,

Respondent Morrison's Attorneys,

March 5, 1912.

Service by copy acknowledged March 6, 1912.

J. J. DARLINGTON,

S.

* * * * *

Now comes the respondent, Frank Morrison, and, basing this motion upon the proceedings had on the respective days indicated and other days, moves the Court for the passing nunc pro tunc of orders copies of which are hereto attached.

RALSTON, SIDDON &
RICHARDSON,

Respondent Morrison's Attorneys,

Filed June 28, 1912.

* * * * *

It appearing that upon the hearing of the above entitled cause on Monday, July 17, 1911, respondent's attorneys moved for the dismissal of these proceedings upon the ground that the order of injunction, alleged to have been violated, was not made by Mr. Justice

Wright, before whom this proceeding was brought, when he 288 was a member of that branch of the Supreme Court of the

District of Columbia, by which the order was made, and was not on said date a member thereof, and that he had no jurisdiction or authority to proceed over this proceeding; furthermore, that at the time this order certifying the cause to Mr. Justice Wright was made, there was nothing pending before the equity court, and nothing to be certified, and that the trial, if at all, should have been had, in the first instance, by that branch of the court against which a contempt was supposed to have been committed, as will more fully appear from said motion filed herein. And it further appearing that said motion was overruled and exception noted, but that no formal order overruling the motion was made and entered at that time, herein, it is this 28th day of June, 1912.

Ordered, That the said motion be and it is hereby overruled as of the date of July 17, 1911, and that this order be entered as of said date.

Whereupon, and as of said date of July 17, 1911, an exception is noted on behalf of respondent.

WRIGHT, *Justice,*

* * * * *

It appearing that on July 17, 1911, the respondent moved to set aside the report herein submitted by Daniel Davenport, J. J. Darlington and James M. Beck, Committee, for the causes expressed in

said motion and exhibits attached thereto, as will fully appear from the same, duly filed in this case, and that upon the determination of said motion, the Court overruling the same, to which order so overruling it, an exception was taken by respondent's counsel, but no entry of said order, or of such exception was made by the Clerk, it is this 28th day of June, 1912.

Ordered, That the said motion be and stand overruled as of the date of July 17, 1911, and that this order be entered as of said date.

Whereupon, and as of said date of July 17, 1911, an exception is noted on behalf of respondent.

WRIGHT.

* * * * *

It appearing that in the course of the proceedings on July 17, 1911, the following occurred:

"The Court who heard the testimony in the prior proceeding could not doubt that there was reasonable ground to believe that a contempt of court had been committed, and if this committee had reported adversely, I do not think the court's duty would have permitted it to receive the report. Those considerations are utterly independent of the outcome of this proceeding, because, as I have indicated, the court cannot say in advance what evidence will be produced in the future."

* * * * *

"Mr. RALSTON: If your Honor please we desire to note an exception to your Honor's order overruling the motion.

"Your Honor a moment ago stated that if these gentlemen had made a different conclusion and had reported that no contempt had been committed, you would not have accepted the report, because your Honor has evidence that it had been committed.

"The COURT: No; I said 'reasonable ground to believe' a contempt had been committed.

"Mr. RALSTON: I understood your Honor to use a stronger expression than that.

"The COURT: That is what I intended.

"Mr. RALSTON: I desire then, with all due respect, in view of the expressions from the bench, to except to being obliged, on behalf of my clients, to submit further motions before your Honor. We submit that for your Honor's judgment.

"The COURT: You submit what?

"Mr. RALSTON: I submit to your Honor's judgment whether under the circumstances we shall be obliged on behalf of the respondents, to proceed further before your Honor.

"The COURT: I do not exactly know what you mean by 'proceeding further.'

"Mr. RALSTON: We are ready to proceed. As we conceive it, your Honor has expressed an opinion which we would certainly at least have great difficulty in overcoming, and in view of the expression of opinion, we submit the question to your Honor as to whether we should further proceed with the next step in this case before your Honor, and whether your Honor should not certify the matter to some other member of the Court.

"The COURT: You may proceed.

"Mr. RALSTON: We note an exception to the direction of his Honor to proceed."

But no formal entry of the order of the Court, or of the
291 exception thereto was made by the Clerk, it is this — day of
—, 1912.

Ordered, as of the date of July 17, 1911, that respondent proceed in this cause before the Justice trying the same.

Whereupon, and as of said date of July 17, 1911, an exception is noted on behalf of respondent.

* * * * *

It appearing that on July 24, 1911, the following occurred:

"The COURT: On Monday, this, amongst other things, occurred:
(Reading from the transcript.)

"Mr. RALSTON: I desire then, with all due respect, in view of the expressions from the bench, to *expect* to being obliged, on behalf of my clients, to submit further motions before your Honor. We submit that for your Honor's judgment.

"The COURT: You submit what?

"Mr. RALSTON: I submit to your Honor's judgment whether under the circumstances, we shall be obliged, on behalf of the respondents, to proceed further before your Honor.

"The COURT: I do not exactly know what you mean by 'proceed further.'

"Mr. RALSTON: We are ready to proceed. As we conceive it, your Honor has expressed an opinion which we would certainly at least have great difficulty in overcoming; and in view of that
292 expression of opinion, we submit the question to your Honor as to whether we should further proceed with the next step in this case before your Honor, and whether your Honor should not certify the matter to some other member of the Court.

"The COURT: You may proceed.

"I have reflected further since then upon the suggestion.

"Whatever might have been the disposition of the presiding justice had there been preferred in orderly manner before the Court a suggestion that another of the Court take up the burden of this proceeding, yet now there is no alternative.

"The attack made before a Committee of Congress by parties defendant permits no course but one.

"The respondents have themselves deprived the justice of all alternative, save to go forward with the duties of the Court and carry them through to the end.

"I noticed in the report of the reporters several inaccuracies which I have corrected in the copy that the reporter submitted to me. Here is the copy containing the corrections. If there is any question to be made about their correctness, it may be settled presently and not arise later. I submit it to counsel, to examine at their leisure. They need not do it now.

"Mr. RALSTON: In order that there may be no question on
293 the face of the record, if your Honor please, while I think we have noted an exception before, I should like again to note an exception to your Honor's proceeding.

"The COURT: Yes. You may proceed, gentlemen."

But it further appearing that no entry of said order, or of the exception thereto was made at the time by the Clerk, it is this — day of —, 1912.

Ordered, as of date of July 24, 1911, that the respondent proceed in this cause before the Justice trying the same.

Whereupon, and as of said date of July 24, 1911, an exception is noted on behalf of respondent.

* * * * *

It appearing that on July 17, 1911, the respondent, by his attorneys, moved the Court that the names of J. J. Darlington, Daniel Davenport and James M. Beck be struck out of the order theretofore made, requiring them to prosecute the charges of contempt against this defendant, and that the name of the District Attorney of the United States for the District of Columbia be substituted therefor, because of the fact that the said J. J. Darlington, Daniel Davenport and James M. Beck, by reason of their employment of attorneys for plaintiff in the suit of the Buck's Stove and Range Company vs. Samuel Gompers, et al. was necessarily biased and prejudiced against this defendant and his codefendants, and not

properly qualified to prosecute the said charges of contempt,
294 all of which will more fully appear from said motion, and that the said motion was, upon consideration, overruled, and an exception thereto noted, and it further appearing that no entry with relation thereto, or to said exception was made by the Clerk, it is this 28 day of June, 1912.

Ordered, That the said motion be, and the same is hereby overruled as of the date of July 17, 1911.

Whereupon, and as of said date of July 17, 1911, an exception is noted on behalf of respondent.

WRIGHT, *Justice*.

* * * * *

It appearing that on July 17, 1911, a motion for a bill of particulars was made, which, with supporting affidavits, was filed at that time, and was further heard and passed upon on Monday, July 24, 1911, which motion and the several paragraphs thereof, were overruled and exceptions thereto were duly taken, but that no entries were made by the Clerk, it is this 28 day of June, 1912.

Ordered, That the said motion for a bill of particulars and the several paragraphs thereof stand overruled as of the date of July 24, 1911.

Whereupon, and as of said date of July 24, 1911, an exception is noted on behalf of respondent.

WRIGHT, *Justice*.

Decree.

Filed June 28, 1912.

* * * * *

295 The above proceeding coming on to be heard upon the report of Joseph J. Darlington, Daniel Davenport and James

M. Beck, appointed by the court a committee to investigate and report to the Court whether or not the said Frank Morrison had been guilty of contempt of this Court in wilfully violating the terms of the injunctions issued by this Court in the cause of the Buck's Stove and Range Company vs. American Federation of Labor, Frank Morrison et al., No. 27,305, Equity, and upon the answer of the respondent to the said report and to the rule to show cause issued thereunder, and upon the testimony taken in support of the allegations of the said report and of the said answer, and having been argued on behalf of the Committee and by counsel for the respondent.

It is thereupon by the Court this 28th day of June, A. D. 1912, upon consideration thereof, adjudged: That the respondent Frank Morrison is guilty of a contempt of this Court in wilfully violating the terms of the said injunctions; and it is thereupon further ordered and adjudged that the said Frank Morrison be confined in the prison of the Washington Asylum and Jail for and during the period of six months, said imprisonment to take effect from and including the date of the arrival of the said respondent Frank Morrison at said jail.

From the foregoing judgment, the respondent Frank Morrison prays an appeal to the court of Appeals of the District of Columbia, which is allowed, and the penalty of the appeal bond is fixed at one hundred Dollars, and the penalty of the bail or appearance bond be, and the same hereby is, fixed at Three thousand Dollars.

To the foregoing order and decree and to the several findings of fact and law therein contained the defendant in open court
296 then and there objects and excepts.

WRIGHT, *Justice*.

Memorandum.

June 28, 1912.—Appeal bond for \$100 approved and filed.

Stipulation as to Use of Bill of Exceptions on Appeal.

Filed June 28, 1912.

* * * * *

It is hereby stipulated that the Bill of Exceptions in the case of In the Matter of Samuel Gompers, proceedings in contempt, No. 30,180, Equity, shall, in so far as applicable, be referred to and treated at any hearing on appeal of the above entitled cause as part of the Bill of Exceptions in the latter cause, with like effect as if made a part of the bill of exceptions therein.

J. J. DARLINGTON,
For Committee.

Assignments of Error.

Filed July 3, 1912.

* * * * *

The appellee and respondent above named, assigns for error in the above entitled cause, the following:

1. The Court erred in overruling the motion to dismiss these proceedings on the ground that the order of injunction alleged to have been violated was not made by the Justice before whom this proceeding was brought when he was a member of that branch of the Supreme Court of the District of Columbia by which the order was made, and was not, on the date of beginning these proceedings, a member thereof, and that he had no jurisdiction or authority to proceed herein; and furthermore, that at the time the order certifying the cause to Mr. Justice Wright was made, there was nothing pending in the case of the Buck's Stove and Range Company vs. Gompers, et al., in the Equity Court, or the Supreme Court of the District of Columbia, and nothing to be certified, and that the trial, if at all, should have been had, in the first instance, by that branch of the Court against which a contempt was supposed to have been committed, as will more fully appear from the motion herein filed.

2. The Court erred in overruling the motion to quash these proceedings on the ground that they were criminal in their nature, these proceedings being brought in equity.

3. The Court erred in overruling the motion to set aside the report submitted herein by the Committee.

4. The Court erred in refusing to strike out the names of the Committee and substituting the name of the Attorney of the United States for the District of Columbia therefor, the said Committee having been biased by reason of their employment as attorneys for plaintiff in the suit of the Buck's Stove and Range Company against Samuel Gompers et al.

5. The Court erred in overruling, on July 24, 1911, the motion for bill of particulars filed herein.

6. The Court erred in overruling a motion to dismiss these proceedings, based upon the ground that no proper replication had been filed to the plea of the statute of limitations.

7. The Court erred in overruling the plea of the statute of limitations herein.

8. The Court erred in appointing a United States Commissioner for the purpose of taking testimony in this cause.

9. The Court erred in receiving improper testimony over the objection of the respondent, as shown by the bill of exceptions herein.

10. The Court erred in excluding proper testimony offered on behalf of the respondent, as shown by the bill of exceptions herein.

11. The Court erred in finding that there was any evidence tending to hold the respondent guilty of the charges made against him, or any of them.

12. The Court erred in finding the respondent guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

13. The Court erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by the respondent after December 23, 1907.

14. The Court erred in not finding that any charges against this respondent herein were barred by the statute of limitations.

15. The Court erred in finding the respondent guilty of the charges against him.

16. The Court erred in inflicting a criminal punishment when sitting otherwise as a Court in Equity.

ALTON B. PARKER,
RALSTON, SIDDONS &
RICHARDSON,

Attorneys for Respondent.

Service by copy acknowledged July 3, 1912.

299

Additional Designation.

Filed July 5, 1912.

* * * * *

In addition to the parts of the record designated by the respondents to be included in the transcript of record for appeal in the above cause, kindly include the order upon the above respondent to show cause issued therein under date of the 26th day of June, 1911.

J. J. DARLINGTON,

For Committee.

To Jno. R. Young, Esq., Clerk Sup. Ct, D. C.

Supplemental Assignment of Error.

Filed August 9, 1912.

* * * * *

The addition to the assignment of error filed in this cause on July 3d, 1912, the respondent hereby makes the following supplemental assignment.

17. "The court erred in imposing the punishment specified in its order and judgment, in that the said punishment is cruel and unusual within the meaning and intent of the Constitution of the United States."

ALTON B. PARKER,
RALSTON & SIDDONS &
RICHARDSON,

Attorneys for Respondent.

300 Supreme Court of the District of Columbia.

THURSDAY, *September 19, 1912.*

The Court resumes its session pursuant to adjournment, Mr. Chief Justice Clabaugh, presiding.

No. 30180. Equity Docket 66.

In re SAMUEL GOMPERS, JOHN MITCHELL, FRANK MORRISON.

On motion of the several respondents by their attorneys, and the Committee consenting thereto, it is this 19th day of September, A. D. 1912, Ordered That the time for the presentation and filing of the transcript of record herein, as to each of said respondents, be and the same is hereby extended until to November 1, 1912.

* * * * *

FRIDAY, *October 4, 1912.*

The Court resumes its session pursuant to adjournment, Mr. Justice Anderson, presiding.

No. 30180. Equity Docket 66.

In re SAMUEL GOMPERS, JOHN MITCHELL, FRANK MORRISON.

By *Justice WRIGHT*:

The court having this day signed the Bill of Exceptions herein as of the time of the noting thereof at the trial of this cause, it is this 4th day of October, 1912, Ordered, That the same be and it is hereby made of record nunc pro tunc.

WRIGHT, *Justice.*

301

Bill of Exceptions.

Filed October 4, 1912.

In the Supreme Court of the District of Columbia.

Equity. No. 30180.

In re SAMUEL GOMPERS, JOHN MITCHELL, FRANK MORRISON.

Now comes here the said respondents by Alton B. Parker and Ralston, Siddons & Richardson, their attorneys, and tender to the Court here their bill of exceptions taken to the rulings of the court during the trial in this cause, (in addition to exceptions reserved at the foot of orders passed herein) and containing in substance all of the testimony offered therein, no other being presented before the Court, and pray that it may be duly signed, sealed and made a part of the record now for then, which is done accordingly.

Bill of Exceptions.

Be it remembered that upon the trial of this cause before Mr. Justice Wright, the following is the substance of all the evidence offered in this case material to the issues.

302 At the commencement of the taking of the evidence in this cause, on December 30, 1911, counsel for respondents noted an objection to the swearing of any witness until informed whether the testimony was being taken before Mr. Harper as Examiner, or before Mr. Justice Wright on final hearing, and asked the question to be passed upon by his Honor. Whereupon upon the statement on behalf of the Committee that testimony was about to be taken in open court pursuant to the order to that effect passed by the Court at the instance of counsel for the respondent, said objection was overruled, and respondents' counsel noted an exception which was allowed.

(Page 248) Thereupon CHARLES A. DUNNINGTON was produced in open Court by the Committee as a witness, and sworn by the Clerk of the Court, and testified, in substance, as follows:

That he was employed in the Congressional Library, a public library of the District of Columbia, and had brought with him certain books which he had been requested to bring, which were all on file in the Congressional Library, and which he identified. These books were the Report of the 28th Annual Convention of the American Federation of Labor, in 1908, which was identified and marked "Exhibit Dunnington No. 1"; also book marked Reports of the American Federation of Labor, 1908 and 1909, held at Denver, Colorado, November 9 to 21, 1908, and at Toronto, Canada, which was marked "Exhibit Dunnington No. 2"; also book containing Reports of the American Federation of Labor, 1906 and 1907, marked "Exhibit Dunnington No. 3"; also the American Federationist, Volume 15, 1908, marked "Exhibit Dunnington No. 4," and American Federationist, Volume 16, 1909, marked "Exhibit Dunnington No. 5"; also American Federationist, Volume 14, 1907, marked "Exhibit Dunnington No. 6; also United Mine Workers' Journal, Volume 18, 1907 and 1908, marked "Exhibit Dunnington No. 7"; also United Mine Workers' Journal, Volume 19, 1908-1909, marked "Exhibit Dunnington No. 8," all of which came from the Copyright Office of the Library, in the charge of Mr. Solberg, which books were on file, accessible to the public and are copyrighted books obtained by the Library under the law which requires two copies of every copyright book to be filed there. (No cross-examination.)

Thereupon JAMES O'CONNELL was produced as a witness by the Committee and duly sworn by the Clerk (Page 252). Respondents' counsel object to his swearing for the reasons stated, and similarly reserving an objection as to the swearing of any other witness at this hearing, which objection was overruled, and an exception was then and there noted. The said witness testified, in substance, as follows:

His place of business was in the McGill Building, and he was President of the Machinists' Union, known as the International Association of Machinists, and one of the Vice-Presidents of the American Federation of Labor, which office he had held sixteen years, holding it during the years 1907, 1908 and 1909, as one of the Executive Council of the American Federation. Could not tell off-hand of whom that body was composed during the years 1907 and 1908. Is acquainted with each of the respondents. During those years Samuel Gompers was President of the American Federation of Labor, Morrison, Secretary, and Mitchell, Vice-President.

The Federation published a monthly magazine called the American Federationist, and Samuel Gompers is editor, having held that position during the years 1907 and 1908. (Identifies Exhibits Dunnington No. 4, 5 and 6 as being, to the best of his knowledge, 304 the American Federationist for the years 1907, 1908 and 1909). Was a delegate of the International Association of Machinists to the Convention of the Federation of Labor held in 1907, 1908 and 1909, and attended. At those conventions was elected Vice-President of the American Federation of Labor. The Convention of the American Federation of Labor, which witness attended in 1908, was held at Denver, Colorado, Samuel Gompers presiding, and Frank Morrison, Secretary. The Convention of 1909 was held at Toronto, Canada, with the same President and Secretary.

Q. "Where was the Convention of 1907 held?"

Objected to by respondents' counsel because it antedates any possible charge in the complaint which is in violation of the order passed December 23, 1907.

Mr. DARLINGTON: "On the contrary, the complaint expressly charges that the proceedings of the 1907 Convention were circulated by these defendants after the injunction was operative."

Mr. RALSTON: "The question is as to when and where it took place, not as to when any circulations took place."

The objection to the question was overruled, whereupon then and there an exception was noted. The witness responded that it was held at Norfolk, Virginia.

Thereupon, in a colloquy between counsel and Court, the Court said (page 258):

"My understanding is that the testimony which is now being adduced is in the form of a deposition to be presented to the Court when the time for final hearing arrives," and that the court had entertained no doubt as to this after the statement made on behalf of the Committee.

Mr. RALSTON: "I did not understand him (referring to Mr. Dar-

305 lington) to make the statement as your Honor puts it. I think the objections made at this time should be reserved for final hearing.

Mr. DARLINGTON: "The objection should be made now, and the ground of the objection inserted in the record."

The COURT: "You may adopt either course you prefer. You may take a ruling now, or let the question be reserved. You may note your objections the same as you would in the taking of an ordinary deposition."

The witness thereupon further testified that in each of the Conventions of 1907, 1908 and 1909, the Executive Committee made reports contained in the proceedings.

Q. "Will you look at the report of the proceedings of the Convention of 1907, at pages 74 to 92, and state whether or not that is the report you made, the report of the Executive Council."

Mr. RALSTON: That is objected to as immaterial, and the objection is reserved, as I understand, for final hearing.

The COURT: "Yes."

The WITNESS: "So far as I know it is."

The report of the proceedings of the Convention of 1908, pages 60 to 106, so far as witness knows, contains the report made by the Executive Council, as also does the like report in 1909, pages 72 to 109. In each of the Conventions, Gompers read his report to the Convention, and one of the Executive Council read its report, and Morrison his, as Secretary. Mitchell was in attendance upon those Conventions. Does not know whether he was present when those reports were read. Was not present when Mitchell, upon the report of the Committee on Boycotts, addressed the Convention of 1909.

306 Does not recall witness' presence at a reception by the Central Labor Union, in 1908, to the delegates in Washington, or that he made an address at that time. Is witness' impression that meetings of the Executive Council of the American Federation of Labor were held in 1908, the minutes of which, as a rule, are published in the Federationist.

A meeting of the Council was held in January 1908, reported page 217 March Federationist, which witness attended. Does not recall whether he attended meeting reported on page 632 of the August 1908 Federationist. Has no doubt he attended the July 1908 Executive Council Meeting at Denver, Colorado, and President Gompers usually presided. Does not recall that President Gompers made a report to the Council at the meeting held January 20-28, 1908, relative to action under Resolution 49 passed by the Convention. There are about seventeen hundred thousand members of the American Federation of Labor. (The question calling for the last answer was objected to, and the objection reserved.) In 1908 and 1909, there were approximately fifteen hundred thousand. (The question calling for the above answer was objected to and the objection reserved.)

Knows nothing of the extent of circulation of the American Federationist, and is not a subscriber. Receives it in exchange, and did so receive it during those years.

DANIEL J. KEEFE (page 264). Is Commissioner General of Immigration, and was for many years President of the Longshoremen's Union; about eighteen years. In 1907 and 1908 was elected from that Union to the Conventions of the American Federation of Labor, and was elected one of the Vice-Presidents, and served as such, and was a member of the Executive Council. Declined re-election at the Convention of 1908. Term of office expired January 1st following. As a member of the Executive Council in 1908, presumes he attended its meetings. Supposes the records state whether he was there or not. The Executive Council made a report to the Convention of 1907 and 1908. Recognizes the reports exhibited for 1907 and 1908. Would not say as to 1909. Gompers presided at the Convention of 1908, and made and read a report thereto. Morrison made a report which was read, as did the Executive Committee.

ANDREW FURSETH (page 267) was next sworn and examined as a witness (at which time it was agreed between counsel that while the depositions were taken in the Gompers case, they should be triplicated and filed in each case as far as material, it being understood that any particular objections which might apply to the depositions as against Mitchell and Morrison, and not against Gompers, and vice versa, might be filed within ten days after the close of the depositions, if so desired).

Resides in San Francisco, California, is a member of the International Seamen's Union of America. Is its President, and went as a delegate to the Convention of the American Federation of Labor, held in November, 1907, 1908 and 1909. Samuel Gompers presided over them. Witness served on the Committee on the President's report. Gompers read his report to the Convention, and Morrison part of his. Executive Council's report is usually read.

Part of the President's report was referred to a Committee, of which witness was a member. Cannot remember if part of the Executive Council's report was so referred. Witness made the report shown in the proceedings of the Convention of 1909, pages 311 to 324. Receives the American Federationist in exchange for the Coast Seamen's Journal.

DENNIS F. MANNING (Page 271) being duly sworn testified that he resided in Washington, and was a member of the Retail Clerk's Protective Association, and as such was a delegate to the Conventions of the American Federation of Labor, held at Denver, Colorado, November 1908, and Toronto, Canada, November 1909. In 1908 and 1909 was employed in the office of the American Federation of Labor in Washington, at 423-425 G Street, his duties including receiving part of the printed matter submitted to the federation. Recognizes the exhibit shown him as the report of the proceedings of the 27th Annual Convention of the American Federation of Labor, held at Norfolk, Virginia.

Q. "Will you state whether or not any copies of that document, or duplicates of that document, were received by you at the headquarters of the Federation of Labor, at 423-425 G Street, N. W.?"

Mr. RALSTON: "The question is objected to, as it is predicated on the circulation of a document which is not itself in evidence, and cannot be intelligibly understood by the Court."

By the COMMITTEE: "There is no use offering it unless we can show it was circulated."

The objection was reserved by the Court, it stating "I think all the questions will have to be reserved;" that other judges might think evidence should be heard which had been excluded.

The WITNESS: Copies of the proceedings of that convention were received in the Department in which I am employed. Yes, and if you mean whether or not, I signed for their receipt, I could not say.

Should imagine there were around seven thousand of them
309 printed and delivered at headquarters. Could not say who printed them. They were placed on the basement floor.

When the price of the proceedings were received, they were mailed by the clerks employed there. Does not remember by what individuals, or how many were sent out. It is pretty hard for witness to say how many; he does not know. They were sent out under no special direction, just a matter of routine work. Does not know that any one had particular charge of it. Should judge it would come under the work of the Secretary of the Federation, Mr. Morrison. He signed witness's check in payment of services. Does not know how many copies were left. Did not have occasion to look it up in 1908. Does not recall that he did. Ordinarily witness would have had charge of the room where those were stored, and in a sense has charge of them now. Cannot inform the Court how many are left. Can ascertain by counting, if the Court so orders. Could not say when they were received. Does not recall whether Morrison was away during the holidays of 1907, and returned about the 2nd of January 1908. Cannot tell whether these were received before or after December 23, 1907. His attention has never been called to the matter. Doubts if he could ascertain the date of their reception. Should imagine the Secretary would know about it. Does not know anyone else who would. Ordinarily the record of sales is kept from year to year, and after the expiration of the year destroyed as of no further value. Did not himself receive, and cannot say who did receive copies of the American Federationist when delivered at headquarters, during December 1907, or during the years 1908 and 1909.

Probably saw copies of the Federationist there during those
310 years. Does not know anything about the Federationist; had nothing to do with its circulation; had not in the years 1907, 1908 and 1909. Presumes the Secretary has such knowledge. Only know that we were working on the lower floor and the Federationist was received on the upper floor. Witness had no connection with sending out the Federationist. The Secretary had his office on the second floor. Is not sure just who was employed in sending out the Federationist. Part of the time when witness was in attendance upon the Federation Convention in Denver in November 1908, Gompers presided. Is President and Editor of the Federationist. He read at least part of his report to the Convention. Can not recall hearing Executive Council's report. Does not think witness was on any Committee. Gompers presided at the Convention of

1909, at Toronto, and read his report to the Convention. Executive Council's report was read. Is not sure on what Committee witness served. Approximately three hundred and twenty-five delegates attended the Toronto Convention, and about the same number in 1909, at Denver. They were delegates from the different unions, composing the American Federation of Labor. Yes; he was present when Mitchell made his speech upon the report of the Committee on Boycotts. (Page 292, objection reserved to this question.) Does not recall what he said. Yes, he would recall his remarks if he saw report.

Q. "I wish you would read that over and see whether you recollect."

Mr. RALSTON: "The request and question to the witness are objected to, the witness among other things being asked to read
311 a book which is not in evidence, and which would be immaterial to the issues of this case, even if it were offered in evidence."

WITNESS: "Without taking up your time to read it through, I should judge that that was the speech he made."

Committee offers remarks of Mitchell, to be found on pages 283 and 284 of the proceedings, beginning "I take advantage," etc., which is objected to for respondents on the ground that it does not relate to anything with which Mitchell is identified in the charges, and therefore irrelevant, and not properly proven. The offer reads as follows:

"Vice President MITCHELL: I take advantage of this occasion to record, as positively as I can, my complete concurrence in the declarations of the Committee.—We will not put this in——"

"Mr. RALSTON: The question, if it be a question, by Mr. Davenport, is objected to as referring to something not in evidence."

"Mr. DARLINGTON: We will offer it in evidence and read so much of it as is pertinent."

"Mr. RALSTON: We object to it, then, on the ground that it does not *relate* to anything with which Mr. Mitchell is identified in the charges, and as incompetent, therefore, and irrelevant, and not properly proven."

"Mr. DAVENPORT (reading): Vice President Mitchell: I take advantage of this occasion to record, as positively as I can, my complete concurrence in the declarations of the committee. I recognize that, at this time, every statement made by the representatives at this convention, and particularly by those who on next Monday must present themselves in Court at Washington, is being scrutinized with the greatest care. I want the delegates to this convention, I want the people of the United States to know that, so far as I am concerned, I shall not speak defiantly, but, let the consequence be what it will, I shall not surrender any right guaranteed to me by the Constitution of our country. I am not sure how much mental and physical suffering will be necessary to make me submit, but if I

312 know myself, and I think I do, no amount of physical pain or mental suffering will persuade me that I have not the right to spend my money where I please, the right to speak

and print whatever I choose, being responsible under the law for the abuse of that right.

"Speaking generally of the boycott, it may be, if properly and advisedly used, one of the most humane and beneficial weapons in the hands of organized labor. Used ill-advisedly it may prove a detriment to us, but whether it be a benefit or a detriment, each man for himself must determine where he is going to bestow his patronage. I deny most emphatically that any merchant or any manufacturer has a property interest in my patronage. It is mine to bestow or withhold as suits my own pleasure, and any attempt through the subtleties of the law to take from me the absolute right to spend where I please my own money—any attempt to take from the people the right to spend where they please their own money—must be resisted at any cost and opposed to the very limit.

"Now, Mr. Chairman, this is the first time during this Convention that I have had anything to say about the proceedings in Court at Washington. I have information that cognizance has been taken there of utterances by men on the floor of this Convention, and I want to go clearly on record, so that no man may misunderstand my attitude, and that no man, however designing, may be able to distort my attitude. I proposed in the future, as in the past, to exercise the right guaranteed me by the founders of our country. I propose—if I am sent to jail—when I come from there to declare again that I shall not, for myself, purchase any product of the Buck's Stove and Range Company. I make this declaration not to tickle the ear of any man; I make it solely that I may declare publicly the conviction that is within me."

"Now, my friends, it seems to me that this whole proceeding should prove a lasting lesson to the workingmen of the United States and Canada. If all the workingmen had been true to themselves, been true to their obligation, there would not have been a non-union product on the market for sale.

"The trouble with us is that we are so concerned with our own affairs that we pay little attention to the affairs of our fellow unionists.

"If the working men could realize that they are the real employers of labor; if they would, in their everyday life carry into effect their open professions, it would not be long before every man and woman working for wages would be a member of a trade union.

I believe the time will come when every working man will demand and insist that the goods he buys shall be made by union labor. The merchants are only too anxious to supply the products men want to use, and the manufacturers will willingly supply the merchants with the products they demand. The difficulty has been that the union man has not insisted upon the union label or upon a union product when he went to spend his money. It is true that there are some who have consistently and persistently demanded Union made goods. It is perfectly obvious by the amount of non-union goods sold that only a small portion of the union men have done their full duty.

"I want to repeat that, so far as I am convinced that—Let the

consequence be what it may—I am going to assert and exercise while at liberty the rights guaranteed by the organic law of the country. I regard myself as a good deal of an American. I grew up with high pride in being an American. It may seem an idle sentiment, but I remember when I was a small boy, when my step-mother was so poor we could not buy bread enough to satisfy our hunger or clothes to keep us warm, and on the cold winter nights I have crept out of bed to get my father's soldier coat and wrap it around me to keep the cold from me, I felt proud that I was an American and the son of an American soldier. I am not less proud now of being an American, but, my friends, I want to see the words "Americanism" stand for all the sentiment that is symbolized by the flag of our country. I want all the liberties, not the liberties that give us the right to do things we do not want to do; I mean the liberties that give us the right to live our own lives and be helpful to one another. I do not believe in that liberty enunciated by some of our courts, which say that men and women must have the liberty to work themselves to death. I do not believe in the liberty enunciated by Judge Tuthill at Chicago, who declared the ten hour law unconstitutional, because it would deny to girls and women the right to work fourteen hours a day. I do not believe in that species of liberty; but I do believe in the spirit of liberty that gives even to the most humble person on our soil the opportunity to grow and develop to the best that is in him."

Cross-examination:

Witness judges he was in the office at the time the report of the proceedings of 1907 was sent there in December 1907, or January 1908. No particular instructions were given to circulate
314 them; it was an understood matter.

Q. "Can you state whether those copies were circulated for the purpose of carrying on a boycott?"

Mr. DARLINGTON: "I object."

WITNESS: "Absolutely not."

Witness did not understand that there was believed by anybody to be any connection between the boycott and that publication. (This statement was made under Mr. Darlington's objection, that the circulation being prohibited, object in circulating was unimportant. Page 299.)

Never heard any discussion to that effect nowhere at that time. Witness did not send them out for the purpose of carrying on a boycott. Did not know that that publication was supposed to have any relation whatever to the boycott. Should imagine he was there when the Federationist for 1908 came in. Recalls an instruction of the Secretary to gather up all copies of a certain issue. Does not recall whether or not it was this issue. Instructions were to collect everyone possible and store them in an unused room far away, so that no one could get them. Cannot recall now the time when it was given. It was verbal. The inference the witness got was because the Court had ordered that they should not be dis-

tributed. Best witness can remember, it was after the first injunction in the Buck's Stove and Range Company case. It appears it was before Christmas, can not remember off-hand—Christmas four years ago. Secretary Morrison gave that specific instruction. Can not recall instructions from Gompers. Remember that he gave instructions generally not to *circular* these copies. Remembers employees were called together by him for the purpose of receiving that instruction. That was in the large room, the first floor back, termed the stenographer's room. Approximately twenty-five employees were present. There was a general notice that Mr. Gompers wished to say something to all of the employees, and all were requested to be present. Could not say exact number. Substance was to the effect that an injunction had been issued and they were restrained from sending out anything that had a notice or direction bearing on the Buck's Stove and Range Company boycott.

Q. "Did you obey that instruction."

(Objected to by Committee as not responsive to direct examination, and that the respondents should not be permitted under the guise of cross-examination to get in their defense out of the Committee's time. Pages 301 & 302.)

The COURT: "The objection is sustained."

By MR. RALSTON:

Q. "Did any of the other employees as far as you know, after the instruction given by Mr. Gompers, circulate any copies of the Federationist of the issue referred to."

MR. DARLINGTON: "I object on the same ground."

The COURT: "It is plainly a matter of defense, and not a matter brought out by the direct examination of the witness."

MR. RALSTON: "I have not the record before me, your Honor, but I think it will be perfectly clear that it is, in effect, a continuation of the matter which Mr. Davenport raised. I expect, of course, to so argue at the final hearing in this case."

The COURT: "The objection is sustained."

MR. RALSTON: "Your Honor mystifies me. Your Honor has repeatedly directed me to reserve any objections until the final hearing, and has repeatedly refused to pass upon objections which I have made. Now, an objection is made by Mr. Darlington, and 316 the reverse course is taken. I desire to especially object and except to your Honor's ruling, under such circumstances."

The COURT: "I have not directed you one way or the other. You do not claim that that was in any way broached in any question put by counsel in the direct examination, as to any direction having been given by Mr. Gompers, do you?"

MR. DARLINGTON: "Or anything as to the Federationist."

MR. RALSTON: "But with regard to the circumstances of the circulation of those documents, yes."

After further discussion, Mr. Darlington gave notice that he would move, on final hearing, to strike out all witness had said on cross-

examination in regard to the Federationist, on the ground that no basis was laid for it in the direct examination, and Mr. Ralston gave notice that he would move to strike out his entire testimony in the hearing.

SAM DE NEDRY (page 305) being first duly sworn, testified in substance as follows:

Is a type setter, and member of the Typographical Union. Attended the Convention of 1909 of the American Federation of Labor, held at Toronto, as delegate from the Central Labor Union of the District of Columbia. Knows Gompers, Mitchell and Morrison. Saw them in attendance. Gompers presided, Morrison acted as Secretary. Heard Gompers read a report as President.

317 Heard the report of the Committee on Executive Council made by Furuseth and the report of the Executive Council. Conducted a printing establishment in Washington in January 1908, known as the Trade Unionist. Does not think that in January 1908, he did any printing for the Federation of Labor. Does not recollect whether he had facilities for doing it at that time. There is a confusion between the Trade Unionist Publishing Company and the Trade Unionist paper, with which he was connected. The publishing company has since gone out of business. It was run by T. E. Ring, Mr. Johnson and J. L. Feeney. Witness had no connection with it at that time. Knows nothing about twenty-six thousand Appeals, free press, etc. Does not recollect receiving or seeing any of them. Yes, he probably saw papers shown him. In January 1908, was Secretary of the Central Labor Union of Washington. Held that for eight terms of six months. Probably received it as Secretary. (The paper exhibited is marked A. H. No. 2, in Equity Case No. 27305, dated January 24, 1908, and headed an "Urgent Appeal", etc. (Reference to the paper was objected to as not having been in furtherance of any boycott, or any connection with any boycott, or proof of contempt of court.)

Witness continued to be Secretary of the Central Labor Union up to the year 1911—up to the close of the election year 1910. Retired in January 1911. Attended a reception given by the Central Labor Union to Gompers, O'Connell and others, on their return from the Convention of 1908, at Typographical Temple, where the American Federation of Labor had their quarters. Saw Gompers and Morrison at that reception. Does not recall seeing

O'Connell. Saw Congressman Wilson and Nichols. Heard

318 part of the speeches. Recalls that Gompers spoke that night. Does not recall that Morrison did. Doubts if O'Connell was there. Knows that he was invited. Cannot recall what Gompers said. Cannot say he has a general recollection. Attention being called to page 53, Federationist for 1909, headed "Talks on Labor", witness says that sounds very much like it. Is what he said in substance.

Mr. Davenport reads in evidence, commencing on page 54, 4th paragraph.

"I have said, and I now want to repeat here, not in bravado,

but in full consciousness of the responsibility with which the statement may be interpreted, that when it comes to a choice between obeying an injunction denying me the rights of free speech, free expression of the thoughts that come to my mind and which are not in violation of the laws of my country, I shall have no hesitancy in standing upon any constitutional rights. We have a dispute with the Van Cleave Buck's Stove and Range Company; I have been enjoined from saying that I won't buy a Buck's stove or range, and I won't, and because I have said this in several ways, by discussion of the case editorially in the American Federationist, and Frank Morrison has sent out the American Federationist containing these things I have said, and because John Mitchell was presiding over the convention of the United Mine Workers, when a motion was placed before that body, advising the members of the Mine Workers not to buy a Buck's stove or range, we have been tried for contempt—that is, we have been called upon to show cause why we should not be sent to jail, and I could not show cause.

"The things that I have been charged with, I did. I have not denied them. I have discussed them on the platform, as I discuss them here. I have written circulars about them. Secretary Morrison sent them out, and I ask you now to place yourself in my position. What would you do?"

MR. RALSTON: "I object to the introduction of the speech as read by Mr. Davenport. If any part of the speech is to be introduced in evidence, it must all be introduced. Furthermore, I object to it as irrelevant under the issues in this case."

319 Witness knows the publication known as the American Federationist, published by the American Federation of Labor. Its editor is and was Samuel Gompers, President of the Federation. Has not been to the headquarters for over a year. Saw a copy of the Federationist each month in 1908. Kept no file and could not tell what particular one. Got them by exchange, as Secretary of the Central Labor Union and volunteer organizer. Got them through the mails. Presumes from the American Federation of Labor, from the mailing room. At that time their headquarters were at 423-425 G Street. Never had occasion to visit that locality where stuff was stored. Business was generally with Morrison or Gompers. Don't know what he did with the copy he received. It was sent to witness as Secretary and organizer. Has no knowledge of what became of them, never kept them on file. Generally read them. Witness's attention is called to the American Federationist for the month of December 1909, and particularly to page 1060, under the heading "President Gompers", etc., and is asked if he remembers it. (Question objected to, the book not having been offered in evidence.)

THE WITNESS: "This is a copy of the report of the President to the Convention."

Mr. Davenport offers in evidence commencing on page 1061, just above the middle of the second column, commencing "Summary of Injunction, Contempt and Appeals," dated November 8,

1909, which is objected to as irrelevant, and not pertaining to the issues raised, and not properly proven.

The part offered in evidence reads as follows:

"On December 18, 1907, Mr. Van Cleave, President of 320 The Buck's Stove & Range Company of St. Louis, who at the time was also President of the National Association of Manufacturers, obtained from Justice Gould, of the District of Columbia, an injunction against the A. F. of L., the members of the Executive Council, both Official and individually, the officers and members of the local and international unions affiliated to the A. F. of L., its agents, friends, sympathizers, or counsel, forbidding them in any way to publish, print, write, verbally or orally communicate the fact that the Buck's Stove and Range Company was unfair to or had any dispute with organized labor, or that it was 'boycotted' by organized labor. The injunction prohibited the publication of the company's name upon the 'We don't patronize' list of the A. F. of L., directly or indirectly, and all were forbidden to state, declare, or say that there existed or had been any dispute or difference of any kind between the company, the A. F. of L. or any of its affiliated organizations in any manner whatsoever.

"Hearing was had before the temporary injunction was issued by Justice Gould. He declined later to modify it or to explain its terms. On December 18th, the Court issued the temporary injunction, it becoming effective December 23rd, when the Buck's Stove & Range Company filed its bond, approved by the Court. The temporary injunction was made permanent March 26th, 1908, by Justice Clabaugh of the same Court.

"Upon authority of the Norfolk convention of the A. F. of L., an appeal from the injunction was taken to the Court of Appeals of the District of Columbia, our main contention being that the terms of the injunction were in violation of fundamental constitutional rights and guarantees, and that it was, therefore, invalid and void. While this appeal was pending before the Court, so hasty and vindictive was Mr. James W. Van Cleave, of the Buck's Stove & Range Company, that he petitioned the Court which issued the injunction to adjudge Vice President John Mitchell, Secretary Morrison, and myself guilty of contempt of court, and to require us to show cause why we should not be punished therefor. We were harassed for months, our counsel and witnesses being required to travel throughout large sections of the country to take testimony. Days upon days were consumed in the examination of Messrs. Mitchell, Morrison and myself at Washington. Practically the history of the A. F. of L. printed, written or unpublished, was made part of the testimony.

"The Court heard argument of counsel on both sides as to 321 whether the defendants, Mitchell, Morrison and I, were guilty of contempt of court. And while the appeal on the original injunction was pending, Justice Wright on December 23, 1908, adjudged us guilty of contempt of court and imposed a sentence of six months, nine months and one year's imprisonment, respectively, upon 'Morrison, Mitchell and Gompers'.

"This passing comment appears apropos. It is that an unprej-

advised, impartial judge might well have deferred a decision in a contempt case alleging violation of an injunction while an appeal upon the validity of the injunction itself was pending and was being considered for decision by a higher court, and further, that the unprecedented sentences imposed were entirely in conflict with the spirit and plain provision of the Constitution as being cruel and unusual.

"The language and manner of Justice Wright in delivering his opinion upon the guilt of the men charged with disobeying the terms of the injunction, the fact that he had given his opinion, or permitted it to be given, out in advance, the whole mockery and formality of asking us whether we had any reasons to assign why sentence should not be pronounced, when he had determined on the sentences in advance; all of these, as well as the matter and manner of the arrangement for the scene and the delivery of the opinion and sentence indicated the unfitness of the man to wear the judicial robe and occupy the judicial position.

"What are the offenses for which Mitchell, Morrison, and I are sentenced to long months of imprisonment and the ignominy of being classified as criminals? We have dared to defend our constitutional rights as men and as citizens. Despite the injunction of a court which sought to invade the rights of free speech and free press secured to the Anglo-Saxon people centuries ago by the Magna Charta and clinched by the adoption of the First Amendment to the Constitution of the United States.

"And what, after all, are the grounds upon which Justice Wright held the defendants guilty of violation of the terms of the injunction?

"When the injunction was issued and went into effect, both temporary and permanent, we proposed to test the principles involved before the established legal tribunals. By instruction of and with authority from the Executive Council, the name of the Buck's Stove and Range Company was removed from the 'We don't patronize' list in the American Federationist.

Vice President Mitchell, it was alleged, violated the injunction by allowing certain acts to be performed by the officers of the A. F. of L. and also, that while presiding at a convention of the United Mine Workers of America, a resolution, regularly introduced by a delegate, calling upon the members of that organization not to bestow their patronage upon the product of the Buck's Stove and Range Company was submitted by Mr. Mitchell to the delegates for a vote.

"Secretary Morrison was charged substantially with having violated the terms of the injunction in so far as that he sent or caused to be sent out copies of the printed official proceedings of the previous convention of the A. F. of L. containing officers' and committee reports and resolutions of the convention relative to the Buck's Stove and Range Company's injunction and copies of the American Federationist containing similar references, circulars, appeals for funds, and editorials written by me on the injunction abuse.

"The allegations charging me with violating the terms of the injunction were that I did, or authorized, or directed to be done, these things; because, by authority of the convention and of the Executive Council, I sent to our fellow workers and friends an appeal for funds in order that we might be in a position to defend ourselves before the courts in the very injunction case involved; because in lectures and on the public platform, during the presidential campaign I made addresses to the people giving the reasons for the vote as a citizen I was to cast at the then pending presidential election, and because I dared editorially to discuss the fundamental principles involved, not only in the injunction pending, but in the entire abuse of the injunction writ. Aye, because I published in the American Federationist the order of the court to show cause why we should not be punished for contempt of the injunction was made part of the testimony upon which Justice Wright deemed it important to hold me guilty."

Did not read the report of President Gompers contained in the Federationist for the month of November 1908, page 1068.

Mr. Davenport offers in evidence from page 1071 of the Federationist for November 1908, reading as follows:

"The Executive Council and I reported to the Norfolk convention that the Van Cleave Buck's Stove and Range Co. had brought suit against the A. F. of L., its officers, affiliated unions, and 323 their members; that we were cited by Justice Clabaugh of the Supreme Court of the District of Columbia to show cause why an injunction should not be issued. During the Norfolk convention—that is, on November 14, 1907, our answer was made, and on December 18, 1907, the injunction was granted by Justice Gould of the same Court. This injunction was issued on December 18, and became effective December 23, when, the undertaking or bond was filed by the Buck's Stove & Range Co. and approved by the Court. The temporary injunction was made permanent March 26, 1908.

"The injunction granted by the Court in this case prohibits the officers of the A. F. of L., the officers and members of all affiliated unions, their or our agents, friends, sympathizers, counsel, 'conspirator or conspirators,' either as officials or individuals, from making any reference whatsoever to the fact that the Buck's Stove & Range Company has ever been in any dispute with labor, or to the fact that the company has ever been regarded as unfair or has ever been on any unfair list, or upon a 'We Don't Patronize' list of the A. F. of L., or any other organization. The injunction prohibits any and all persons from either directly or indirectly referring to such controversy. Such statement or reference is also prohibited by printed, written, or spoken word.

"Acting upon the authority and instruction of the Norfolk Convention, eminent counsel, consisting of Judge Alton B. Parker and Messrs. Ralston & Siddons were retained. When the injunction was issued and made permanent our counsel were instructed to appeal to the Court of Appeals of the District of Columbia. In the meantime, with the authority of the Executive Council, the publication of the

name of the Buck's Stove and Range Company was discontinued in the 'We Don't Patronize' list of the American Federationist. Later, I discontinued the publication of the list in its entirety, and for the reasons which I shall hereafter give. Of course, I discussed in the editorial columns of the American Federationist the injunction and the fundamental principles involved.

"In July a petition was presented by the Buck's Stove and Range Company and an order issued by the Supreme Court of the District of Columbia against 'Samuel Gompers, President of the A. F. of L., Frank Morrison, Secretary of the A. F. of L., and John Mitchell, Second Vice President of the A. F. of L.' to 'show cause' why they should not be punished for contempt of court.

324 "Substantially the allegations are that Vice-President Mitchell violated the injunction as Vice-President of the A. F. of L., in authorizing and permitting acts to be done by the A. F. of L. officers, and also that he, as the president of the United Mine Workers of America, entertained a resolution at the Mine Workers' Convention last January, calling upon the miners of the country to refrain from purchasing the products of the Buck's Stove and Range Company.

"The allegations against Secretary Morrison are substantially that he sent out, or caused to be sent out, copies of the American Federationist, containing editorials and other utterances referring to the Buck's Stove and Range Company, and also sending, or causing to be sent, the printed official proceedings of the Norfolk Convention of the A. F. of L., containing the reports and resolutions of the Norfolk Convention upon the Buck's Stove and Range Company's suit and injunction.

"The proceedings against me are based upon the allegation that I violated the injunction in doing, or authorizing, or directing the doing of these acts, the sending out of an appeal for funds for our legal defense in the suit and injunction proceedings, on the platform in public speeches, and in editorially discussing the fundamental principles involved in these proceedings.

"The injunction issued by the Supreme Court of the District of Columbia at the instance of the Buck's Stove and Range Company was published in the February issue of the American Federationist, 1908. It is suggested that the injunction, together with the editorial appearing in that same issue of the American Federationist under the caption 'Free press and free speech invaded by injunction against the A. F. of L.—A Review and Protest,' as well as the editorials since, be read and considered in connection with this matter.

"Your attention is invited to the petition of the Buck's Stove and Range Company to the Court for its order (which order was granted) for Mr. Mitchell, Mr. Morrison and me, to 'show cause' why we should not be punished for contempt of court for alleged violation of the Court's injunction. The petition is published in the September, 1908, issue of the American Federationist. I suggest that that petition be considered in connection therewith, as it will show fully the grounds upon which our punishment is sought. The publication in the American Federationist of a legal document of that court, that is, the petition of the Buck's Stove and Range Company to the

325 Court, citing John Mitchell, Frank Morrison and me, to show cause why we should not be punished for contempt, is also alleged as an evidence of my violation of the Court's injunction.

"The hearing in the contempt proceedings was set for September 8th, and by agreement deferred to the following day. On September 9, our counsel by our direction offered to submit the entire case, upon the petition and our answer, to the judgment and decision of the Court. The Court, however, referred the taking of testimony to a commissioner, and accorded 30 days for each side to present testimony. Before the expiration of the 30 days accorded to the Buck's Stove and Range Company, they applied to the Court and obtained 20 days additional. This brought the case up to October 29. In the meantime the Buck's Stove and Range Company's counsel engaged the attention of Messrs. Mitchell, Morrison and myself for many days, and then proceeded to several parts of the country where it was necessary for our counsel to be in attendance. Instead of availing ourselves of the 30 days accorded to us by the Court, we advised our counsel to submit the testimony adduced by the Buck's Stove and Range Company, and to submit the entire case for the judgment of the Court without any further evidence on our part. On October 30, the Court ordered that it will hear argument on November 10, and decide upon the case. On November 10, during the time this convention will be in session, the Court will decide the case, whether Messrs. Mitchell, Morrison and I have been guilty of contempt of the Court's injunction. In my report to the executive council, in September, I took occasion to discuss this matter, and I can do no better than to repeat the language here:

"Your attention is especially called to a feature of the case of this injunction. If all the provisions of the injunction are to be fully carried out, we shall not only be prohibited from giving or selling a copy of the proceedings of the Norfolk Convention of the A. F. of L., either a bound or unbound copy; or any copy of the American Federationist, for the greater part of 1907, and part of 1908, either bound or unbound, but we, as an Executive Council, will not be permitted to make a report upon this subject to the Denver Convention.

"Unless we violate the term of this injunction, we are prohibited from referring to the case at all, either in our report to the Convention, or to others. Should a delegate to the Convention ask the Executive Council what disposition has been made, or what the status of the case is, we shall be compelled to remain silent. For one, I am unwilling to be placed in such a position. I have neither the inclination nor the intention of violating the process of the court, but

326 I cannot see how it is possible for us to hold up our heads as honest men and still refuse to give an accounting to our fellow workers, and to the public as to the status and outcome of this cause."

"The Executive Council has been advised that in this report to you I shall fully cover this subject, thus making it unnecessary for duplication in the report which the Executive Council and I will jointly make to you.

"As a citizen and a man I cannot and will not surrender my right of free speech, and freedom of the press. As President of our Federation, a decent regard for my duty to you and to all our fellow workers, and to the public generally, requires that a comprehensive report shall be made of these entire proceedings, so that the subject may receive your consideration, to the end that action may be taken to protect the interest of labor and the rights of our people before the courts, as well as before that higher tribunal, the public conscience of the people of our common country.

"Shall injunction invade free speech and free press.

"It is impossible to see how we can comply fully with the Court's injunction. Shall we be denied the right of free speech and free press simply because we are workmen? Is it thinkable that we shall be compelled to suppress, refuse to distribute, and kill for all time to come the official transactions of one of the great conventions of our Federation? I opine not."

(To this offer Mr. Ralston objects, because it has not been proven to be a correct copy of the transcript of what happened at the time, and otherwise irrelevant.)

ANNIE V. GRACE being first duly sworn (page 330) testified in substance as follows:

During the years 1907 and 1908 was employed at various times by the Federation of Labor, 423 G Street; employed by Mr. Morrison, Secretary, addressing envelopes, folding and done extra work. Cannot say the month. Witness is shown paper and asks if she recalls having seen it before, but could not say, as has sent out all sorts of circulars and books and things. When she went there it was usually about a week; had a great number stacked up to send out. Has no recollection of what she sent. Cannot say who else worked
327 there in January 1908. Sometimes sent out two or three folded together, in one envelope. Cannot remember any particular circular.

THOMAS F. TRACEY being duly sworn (page 335) testified in substance as follows:

Belongs to the Cigar Makers' International Union, and as a delegate attended conventions in Norfolk, Virginia, in 1907, in Denver, Colorado, November 1908, and Toronto, Canada, in 1909. Served on Committee on President's report. Fursueth was on Committee and Congressman W. B. Wilson. Gompers presided at all of the conventions. Is President of the American Federation of Labor, and believes he is editor of the Federationist. Heard him read his report at all three conventions. Subsequently those reports were referred to the Committee of which he was a member, all three of them, and they acted upon them. Cannot recall that he heard the Executive Council's report read. Portions of the reports of the Executive Council were referred to the Committee on the President's report. Parts relating to the Buck's Stove and Range Company litigation and contempt proceedings in the Executive Council's report were referred to the Committee on President's Report, which witness

also saw. Read the proceedings of the conventions after they were published. Reports made by different officials are reports of proceedings of the conventions. Saw John Mitchell at the 1909 Convention at Toronto. Did not hear him make his speech in connection with the Committee on Boycotts; was not present. Did not attend reception given in November 1908, after the Denver Convention to Gompers, Morrison and O'Connell at the Typographical Temple.

CLARENCE W. PERLEY being first duly sworn (page 341) testified as follows:

Is employed in the Congressional Library, in charge of the Division of Periodicals. It is the practice upon the receipt of the several issues of a periodical to put a stamp upon it. They come to the library through the mails. There is a stamp on the Federationist for the year 1908, January number, showing the date of its reception, December 24, 1907.

ANTON ZICHTL, being first duly sworn (page 343), testified in substance as follows:

Is engaged in bookbinding business in Washington. In December 1907 and January 1908, bound books for the A. F. of L., the American Federationist and proceedings and books of different kinds. Bound 100 books like sample, being proceedings of the convention of 1906 and 1907 of the American Federation of Labor, Exhibit Dunnington No. 3, ordered January 9, 1908, delivered generally three or four weeks later. Received this copy (memorandum) from Mr. Manning, employed by the Federation of Labor.

Mr. Davenport offers in evidence the following memorandum:

"Have copies of the proceedings of the Norfolk Convention bound in leather the same as bound every year for the members of the Executive Council, one copy each for the following parties:

Theodore Roosevelt, President of the United States,

Oscar S. Straus,

Charles P. Neill,

Committee on Labor, House of Representatives

Senate Committee on Education and Labor,

329 Judiciary Committee, House of Representatives,

Judiciary Committee, U. S. Senate,

Parliamentary Committee, British Trade Union Congress,

Library of Congress,

(O. K.—Morrison.)

"Return this copy after completion of work to Manning, A. F. L."

(Objected to by Mr. Ralston for want of date and proof of signature of Mr. Morrison, as well as to its general relevancy.)

Exhibit marked "Exhibit Zichtl No. 1."

Did work in way of binding the American Federationist at that time.

(Objected to by Mr. Ralston as immaterial.)

Delivered volumes after binding to the American Federation (same objection).

Bound 400 Federationists every year (same objection). Delivered bound copies to the Federation headquarters as the order states, 400. Bound "Exhibit Dunnington No. 1, being report of A. F. of L. of 1908.

CHARLES B. MATTHEWS (Page 349) being first duly sworn testified as follows:

Is employed as Superintendent of letter carriers in the City Post-office. In December 1907, and January 1908, was assistant superintendent of Station G. Then had possession of the records showing the receipts and dates of weighing and mailing of American Federationist for the months of December 1907, and January 1908. Weighing was done by one of the clerks and the slip placed on his desk, from which he compiled the proper receipts. Had these records in his possession in September 1908, and testified in regard to them in a proceeding in the name of the Buck's Stove and Range Company vs. Samuel Gompers and others, before Mr. Harper the examiner. Understood he was a commissioner appointed by the court to take testimony. Does not have these records in his possession now. Does not think they are in existence. Left Station G, or was transferred in 1909, and went to the main office. Then the records were there. About a year ago the building was remodeled and a lot of the old files thrown away or sold. Have made every effort to locate them, but they are not there and undoubtedly have been destroyed. When he testified before he had those records with him, and testified from the records, and according to the facts as shown by them. Identifies (page 361) his signature to the deposition shown him. Would make an affidavit as to the sheet upon which his name appears. Can not say as to the four or five previous sheets. Apparently it is correct, but would not swear because it has been so long a time, and his name is only on one sheet. Would not like to say if it was absolutely correct. That he read his former deposition over before he signed it and that at that time it was correct. If this is the same thing it is correct. If the papers shown him are a true copy, and in his mind he has no doubt it is apparently true, the figures in there are correct. If the papers shown him are the original sheets of his former deposition they are correct. Thereupon, Albert Harper, the examiner who took the former deposition, having been called and having testified that the papers shown the witness were the original sheets of his former deposition, the witness reads from his former deposition to show what the records showed were the number of Federationists mailed on the several days mentioned therein. (Objected to for the respondents as incompetent and an improper way of proving the facts sought to be maintained.)

The regular issue came out on the 22nd day of December. Seventeen Hundred and sixty-two pounds. The first receipt issued on the 7th of December, ten pounds. That left a balance to the Federation of \$59.90 on hand. On the 9th,

seven hundred pounds, that left a balance of \$52.90. On the 15th thirty-seven pounds, a balance of \$52.53, being cash on hand to the credit of the Federationist. On the 17th eight pounds, balance \$52.45. On the 21st two pounds, balance \$52.43. On the 22nd was issued the magazine for the coming month. They generally mailed along about that time of the month. It shows the date of issue, the 22nd. Number of receipts given, one. Subscribers' copies seventeen hundred and sixty-two. Amount of postage \$17.62. Subscribers' copies refers to the weight. Not the copies themselves. That left a balance of \$34.81. On the 23rd seventy-five pounds mailed. That left a balance of \$34.06. On the 31st three pounds, balance \$34.03. On the 4th of January fourteen pounds, left a balance of \$33.89. On the 5th \$25.97 deposited by publishers, but no mailing. On the 9th eleven pounds, leaving a balance of \$59.75. On the 14th eight pounds, balance \$59.67. On the 17th fifteen pounds, leaving a balance of \$59.52. On the 24th eight pounds, leaving a balance of \$59.44. On the 25th another regular issue, 134 pounds, leaving \$58.10. It has been the custom so long as witness was employed at the station, for the Federationist, at the first of every month, to endeavor to have a cash balance of \$60.00. They would remit a check for the amount of the difference between their mailings, and \$60.00, so that really on the 1st of every month there would be to their credit in the Station G Postoffice \$60.00, to cover mailings for that month. This \$25.00 deposited on January 5th was postage money on contemplated mailings. On the 25th the regular February issue came out. Mailings were 134 pounds, leaving \$58.10. On the 27th, ten hundred and seventy-six pounds, leaving \$47.34. On the 28th five hundred and twenty-seven pounds, leaving \$42.07. On the 30th seven pounds, leaving \$42.00, and on the 31st they deposited \$17.93. About the 22nd were mailed Seventeen Hundred and sixty-two, the bulk of the issue. There were seventy-five pounds came in on the 23rd. They have scattered a few pounds every now and then during the month. That is the end of the quarter. That shows they mailed twenty-five hundred and ninety-seven pounds during the month of December, which is perfectly accurate.

Cross-examination by Mr. RALSTON:

(Page 375.) Something like Seventeen Hundred pounds were deposited in the office on December 22nd. The reason for it probably was it came in on the 22nd, Christmas is the 25th, and they are very accommodating people down there and try to relieve us on Christmas day.

Mr. Davenport offers in evidence, reading from page XVI, a portion of the Constitution of the A. F. of L., in force in 1907 and 1908.

"Article V—Officers.

"SECTION 1. The Officers of the Federation shall consist of a president, eight vice presidents, a secretary, and a treasurer, to be

elected by the convention on the last day of the session, and these officers shall be the Executive Council.

"SECTION 4. The terms of the officers of the American Federation of Labor shall expire on the first day of January succeeding the convention.

"SECTION 5. The president and secretary shall engage suitable offices in the same building at Washington, D. C., for the transaction of the business of the organization.

333 "SECTION 6. All books and financial accounts shall at all times be open to the inspection of the present and the Executive Council.

"Article VI—Duties of President.

"SECTION ONE. It shall be the duty of the president to preside at the annual convention; to exercise supervision of the Federation throughout its jurisdiction; to sign all official documents, and to travel, with the consent of the Executive Council, whenever required, in the interests of the Federation.

"SECTION FOUR. The president shall call meetings of the Executive Council, when necessary, and shall preside over their deliberations and shall receive for his services such sum as the annual convention may determine, payable weekly.

"Article VII—Duties of Secretary.

"SECTION ONE. The duties of the secretary shall be to take charge of all books, papers and effects of the general office; to conduct the correspondence pertaining to his office; to furnish the elective officers with the necessary stationery; to convene and act as secretary of the annual convention, and to furnish the committee on credentials at the convention a statement of the financial standing of each affiliated body; to forward on March 1st and September 1st of each year to the secretaries of all affiliated organizations a list of the names and addresses of secretaries and organizers.

"SECTION TWO. The Secretary shall keep all letters, documents, accounts, etc., in such manner as the annual convention may direct; he shall receive and collect all moneys due the Federation, and pay them to the treasurer, taking his receipt therefor; provided that he may retain in his hands a sum not exceeding two thousand dollars for current expenses, which money shall be paid out only on the approval of the president.

"SECTION THREE. The Secretary shall submit to the auditing committee, for their inspection, vouchers for all moneys expended; close all accounts of the Federation on September 30 of each year, and all moneys receive- or disbursed after such date shall not be reported in the general balance accounts of the ensuing convention. He shall publish a financial report monthly in the American Federationist, and send one copy to each affiliated body, and such additional number of copies as may be ordered and paid for by any organization connected with the Federation."

(To the foregoing offer Mr. Ralston objects for that no charge

is predicated on anything contained in the Constitution of the A. F. of L.)

Mr. Davenport offers in evidence a portion under the heading "Official," commencing on page 217 of the *Federationist* for 334 March, 1908, reading as follows:

"A. F. of L. Executive Council Meeting.

WASHINGTON, D. C., *January 20-25, 1908.*

"Executive Council called to order January 20, at ten o'clock, President Gompers in the chair. Present: Gompers, Duncan, O'Connell, Morris, Huber, Valentine, Lennon, Morrison, Hayes, and Keefe.

"On motion it was decided that sessions be held from nine to twelve, two to five, and eight to ten, p. m.

"President Gompers' Report.

"Executive Council, A. F. of L.

"COLLEAGUES: I beg to submit herewith report of some of the general work performed, also that performed, *also that performed* in accordance with the instructions of the Norfolk Convention and the E. C. in Norfolk after the adjournment of the Convention.

"For brevity, the work of carrying out the instructions of the Convention is referred to herein by the number of each resolution, as noted in the official printed proceedings."

(To the foregoing offer Mr. Ralston objects as not pertinent, or relevant to any issue in this case, and gives notice that he will move to strike it out.

Mr. Davenport offers in evidence from page 218 of the *Federationist* for March 1908, second column (page 356) as follows:

"Resolution No. 49. In conformity with the provisions of this resolution, circular was issued on November 26 to all affiliated organizations in regard to the suit brought by Mr. Van Cleave for the Buck's Stove and Range Company against the A. F. of L., its E. C. and others. The E. C. has been kept advised from time to time what steps have been taken in this matter.

"With your consent I retained Alton B. Parker as senior counsel to act with Messrs. Ralston and Siddons in defense of labor's rights in this case. Our position and attitude in this case are fully set forth in an editorial which I have written and which will be published in the February issue of the *American Federationist*, and which I shall lay before you before adjournment.

"In accordance with the action of the Convention and your directions the levy of one per cent per member was made upon all affiliated organizations for the legal defense. To January 18, we have received \$10,972.55.

"I have issued a circular appeal for voluntary financial contributions for the legal defense in this case which I regard as 335 one of the highest moment, not only to our fellow workers and our movement, but in retaining the rights of free speech

and free press for all our people. The entire matter should receive your further consideration at this session."

(To the foregoing Mr. Ralston objects as incompetent and not charged as grounds of offense in this case, and not tending to prove any charge, and not being an admission, and not admissible under any other head.

Mr. Davenport offers in evidence (page 358) the following from pages 212 and 215 of the report of the Convention held at Norfolk, Virginia.

"Delegate Ryan (W. D.) for the Committee on Resolution, reported as follows:

"The Committee recommended the adoption of resolution No. 49 when amended to read as follows:

"Resolution No. 49—by delegates A. B. Grout, James J. Dardis of the Metal Polishers, Buffers, Platers, etc.:

"Whereas, the Buck Stove and Range Company of St. Louis, Missouri, of which J. W. Van Cleave is president, has attempted to disrupt the Metal Polishers, Buffers, Platers, Brass Moulders, Brass and Silver Moulders' Union of North America, and in pursuance of said object has arbitrarily abolished the nine hour work day, which has existed in factories for over eighteen months; and, instituted a ten hour work day;

"Whereas, the said J. W. Van Cleave, the president of said company, is also president of the National Manufacturers Association, an organization which constituted a small minority of the manufacturers of the country, and has declared its hostility against all labor organizations, and it was through the recommendations of the said J. W. Van Cleave that the said Manufacturers' Association has undertaken to raise a fund or funds of \$1,500,000 in three years for the alleged purpose of education, but which at the present time is being used under the direction of said J. W. Van Cleave in an attempt to disrupt the labor organizations of the country, especially the Metal Polishers, Buffers, Platers, Brass and Silver Workers' Union of North America, as well as the International Brotherhood of Foundry employees, with whom his company has a dispute; and,

"Whereas, it has come to our knowledge that the funds of the Manufacturers' Association are being expended under the direction of the said Van Cleave for the employment of detective 336 bureaus throughout the United States, who are now conducting a campaign of villification and slander against the officers and members of labor organizations for the purpose of creating disgust amongst the entire membership and to deceive and mislead them. Therefore, be it

"Resolved, that each central body affiliated with the A. F. L. be and is hereby requested to appoint a committee who shall conduct and manage a 'Campaign of Education' among the membership affiliated with their central bodies, as well as dealers in stoves and ranges in this locality and thoroughly inform them of the entire facts of the dispute between the Metal Polishers, Buffers, Platers, Brass and Silver Workers' Union of North America, the Brotherhood of Foundry Employees, also as to the attitude of J. W. Van

Cleave and the Manufacturers' Association towards organized labor. Be it further

"Resolved, that the said committee shall report on the first of each month to the officers of the A. F. of L. the progress of the 'Campaign of Education' together with a complete list of all dealers in that locality who are handling and selling the products of the Buck Stove and Range Company.

"Be it further

"Resolved, that all commissioned organizers of the A. F. of L. shall report on the first of each month to the offices of the A. F. of L. the progress made in 'this Campaign of Education' by the different committees of the different central bodies in their respective districts, and also render such aid to all committees as lay in their power.

"A motion was made and seconded that the report of the committee be concurred in.

"The question was discussed by Delegate Grout and Vice President Duncan.

"The motion to concur in the report of the committee was carried."

(To the foregoing offer Mr. Ralston objects as incompetent and irrelevant, and not tending to support any issue in this case, and referring to events antecedent by more than a month to any of the things complained of in the Committee's report, and further that it does not appear that any of the respondents after December 23rd, did anything whatever to carry out any of the suggestions of the resolutions, and have never said they did directly, or indirectly.

337 Mr. Davenport offers in evidence from page 215 of the same exhibit, the following:

"Delegate Ramsey for the Special Committee read the following supplementary report:

"To the officers and delegates of the forty-seventh annual convention of the American Federation of Labor:

"Your special committee to which was referred the subject matter of the suit of the Buck Stove and Range Company, beg leave to submit the following supplemental report:

"Referring to Resolution No. 49, hereto attached, by Delegates A. B. Grout and James J. Dardis, of the Metal Polishers, Buffers and Platers' Union, relative to a campaign of education, we fully agree with the purpose of the resolution, but recommend that the details and matter of carrying out the spirit and object of the resolution be left in the hands of the president and the Executive Council."

(To the foregoing Mr. Ralston interposes the same objection as just stated.)

JOHN H. LOREN being first duly sworn (page 365) — that he was a member of the International Union of Steam Engineers, and in the later part of 1908, was President of the Central Labor Union in Washington. Presided at a reception given in a room occupied by the Central Labor Union to Gompers, O'Connell and Morrison on their return from Denver. Gompers was there, O'Connell was

there, and is not sure about Morrison. Believes Congressman Wilson was there.

(Mr. Ralston objects to examination about the incident, as not charged in any way in the complaint, or report of the Committee, and occurring long after the injunction order, violation of which was charged, had ceased to have any effect.)

Remembers there was a reception, and that Gompers, O'Connell and Wilson, and he judges Nichols, was there. Could not be positive about Morrison.

338 They sat on the platform if they sat in the room at all.

Witness opened up the meeting and made some remark, what he cannot remember. The others who addressed the meeting were on the platform with him. Believes Morrison was there from that paper. Platform was crowded and he was busy.

ALBERT HARPER being first duly sworn (page 369) testified, in substance, that pages 278 to 285 inclusive, purporting to be the deposition of Charles B. Matthews, were the identical pages of the deposition that Matthews signed before him, to which question Mr. Ralston objected as immaterial and irrelevant. They are those he returned to the court under his certificate.

MARK W. MOORE being first duly sworn (page 377) testified as follows:

Is Manager of the Law Reporting Printing Company. Did printing for the Federation of Labor in 1907, 1908 and 1909. Printed the Federationist for January 1908. Entry on his accounts, showing that "25,000 reprint editorial, eight pages, folio 7328, charge \$148.50," under date of January 17, 1908, is a correct entry, of the transaction and day and time. Cannot identify "Exhibit A. II. 13," in Equity No. 27,305, headed "Free Speech, etc." Cannot tell to what subordinate hands it went. The job tickets and time tickets and everything are all destroyed. Never saw it at all. It comes in the office and he never gets to look at it even. Reprinting orders don't come under his attention at all. Cannot identify it as the work of his office. His office does not do all its own work. Is not possible for him to swear to work like that, because he has

339 work done on type setting machines and plates made in other places. They do the press work, but cannot tell anything like that. The foreman in December 1907 and January 1908 was Frank B. Crown. He is the present superintendent.

The Committee offers in evidence portion of the petition in the contempt proceedings referred to in the report of Mr. Gompers to the Convention of 1908, being from the September 1908 Federationist, commencing on page 682, to which offer respondents' counsel objected on the ground of incompetency and irrelevancy, and that it relates to an event occurring long after the dates to which the charges of contempt in this case were limited.

MR. DAVENPORT: "Your Honor will remember that Mr. Gom-

pers stated he did the things he was charged with when he was cited to court."

MR. RALSTON: "There is no evidence to show what those things were, nor to what that admission related, but there is no admission that I can discover, or purported admission in the recital contained in the Committee's charges in this connection in paragraph 11.

The offer of evidence is as follows:

"XVI. The order for an injunction pendente lite having been passed on the 18th day of December, A. D. 1907, and the injunction having taken effect and become operative on the 23rd day of December, A. D. 1907, as above stated, the said Samuel Gompers, as will be seen by reference to his deposition in this cause, hastened or 'rushed' the publication of January, 1908, issue of the American Federationist, with a view to circulating the same during the time which should elapse between the passage of the said order for an injunction and the injunctive order itself. The said January, 1908, number, at page 51, includes and publishes in full the 'We don't patronize,' or 'Unfair' list of the American Federation of Labor, containing the name of the petitioner. And at page 38 of said issue the said Samuel Gompers published the following:

"A limited number of the American Federationist for 1907, bound in two volumes, may be had on application to this office. The 1907 volumes are bound in the same style as the preceding year."

"The official printed proceedings of the Norfolk Convention of the A. F. of L., are now ready and can be had upon application by mail, 25 cents per single copy, \$20 per 100. Postage prepaid by the A. F. of L."

"The said proceedings of the Norfolk Convention contain, at page 91, the name of petitioner as being on the 'Unfair' List of the American Federation of Labor.

"Notwithstanding the fact that the injunction pendente lite had taken effect on the 23rd day of December, A. D., 1907, the said Samuel Gompers and the said Frank Morrison thereafter continued to circulate and distribute the said issue, containing the name of petitioner, as aforesaid, and notwithstanding the fact that the permanent injunction has since been entered in this cause, they have, from the said 23rd day of December, A. D., 1907, to the present time, continued, uninterruptedly to circulate and distribute to the public generally copies of the said January, 1908, number of the American Federationist, of the proceedings of the Norfolk Convention above mentioned, and bound copies of the American Federationist for the year 1907, the latter containing, in each of the May, June, July, August, September, October, November and December numbers thereof, the name of the petitioner on the 'We Don't Patronize' or 'Unfair' list of the American Federation of Labor; all in violation and willful disregard and contempt of the injunctive order and decree of the court in this cause.

"XVIII. Thereafter, to wit, in the February, 1908 number of the American Federationist, said Samuel Gompers, in the editorial

column thereof, under his own name, published a lengthy article concerning the said order, at pages 96 to 105, inclusive, and the said Samuel Gompers, Frank Morrison and John Mitchell, published, at pages 112 and 113 of the said number of the American Federationist, what they denominated an 'Urgent Appeal' signed by the defendant Samuel Gompers, as President, the defendant Frank Morrison, as Secretary, and the defendant James Duncan, John Mitchell, James O'Connell, Max Morris, D. A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, as Vice Presidents, and the defendant John B. Lennon, as Treasurer, composing the Executive Council of the American Federation of Labor, in which they made special reference to said editorial article as containing a full presentation of the said defendants' position in regard to said order of injunction. In the course of both the said editorial and the said 'Urgent Appeal' it was stated that the order is an invasion of the liberty of the press and the right of free speech, and further stated in said editorial that 'with all due respect to the Court, it is impossible for us to see how we can comply with all the terms of this injunction,' and further stated in said editorial as follows:

"This injunction cannot compel union men or their friends to buy the Buck's Stoves and ranges. For this reason the injunction will fail to bolster up the business of this firm, which it claims is so swiftly declining.

"Individuals, as members of organized labor, will still exercise the right to buy or not to buy the Buck's Stoves and Ranges. It is an exemplification of the saying that 'you can lead a horse to water, but you can't make him drink,' and more than likely these men of organized labor, and their friends, will continue to exercise their right to purchase the Buck's Stoves and Ranges.

"It may not be amiss here to say that in all these proceedings, whether before the court or in the contest forced on labor by the Buck's Stove and Range Company, no element of personal malice or ill-will enters. Labor is earnestly desirous of entering into friendly relations with employers, and this is none the less true of its desire to reach an honorable adjustment and agreement with the Buck's Stove and Range Company. So long, however, as that company continues in its hostile attitude to labor, denying it the right to organize, discriminate against union members, and refuses to accord conditions of employment generally regarded as fair in the trade, it must expect retaliatory measures; these measures, always, however, within the law, and for the purpose of ultimately reaching an honorable and mutually advantageous agreement.

"The publication of the Buck's Stove and Range Company on the 'We Don't Patronize' List of the American Federation of Labor is only an incident in the history of the case. These stoves might have been left as severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing the firm from the list against which we primarily protest, it is this injunction invading the freedom of the press."

"And at pages 114 and 115 of the said February, 1908 number of the American Federationist, the said Samuel Gompers published

the order itself at length, prefacing the same with the following statement:

342 "In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove and Range company declares that punishment for violation of the injunction issued by Justice Gould, against the American Federation of Labor, applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation of Labor assure us that this construction of the Court's order is accurate."

"Petitioner is advised and believes, and therefore avers that the said statement prefacing the publication of the order of December 18, 1907, is an incorrect interpretation of the effect of the said order, and was made for the purpose of defeating and of inducing others to violate the same; and that the publication of the said order, prefaced as aforesaid, and of the editorial, constituted a violation of the injunction pendente lite, and a contempt of the order of the Court. A copy of the said February, 1908, number of the American Federationist is herewith filed, marked Exhibit Petitioner No. 1, and it is prayed that the said editorial, said urgent appeal, and the reference on page- 114 and 115 thereof to the said order, be taken and read as a part of this petition."

Mr. Davenport then offers the financial statements published by Mr. Morrison in the Federationist of January, February and March 1908 first reading from a portion of the entry on January 31, on page 238.

To the above offer Mr. Ralston objected as incompetent and irrelevant under the issues in this case, and entry is made as to the person against whom it is offered as evidence.

To which the reply was: "In the first place, it is offered as evidence against Mr. Frank Morrison. It is a declaration by him that he did the things which are contained in these statements."

The offer and objections thereto further read as follows:

343 (Reading) "Twenty-six thousand appeals, free press, \$144. Trades Unionist Pub. Co.—"

Mr. RALSTON (interrupting): "I object to this further because not connected with any item charged in the report of the committee."

Mr. DAVENPORT: "That says that he paid for printing these 'Urgent Appeals,' and I will show in a moment he paid for printing the reprint of the editorial, and he paid for the stamps, and he paid for the girls to address and mail them out. That is the pertinency of it."

Mr. RALSTON: "With all due respect, I object to Mr. Davenport testifying."

Mr. DAVENPORT: I am not intending to testify. On page 236, under the heading "expenses," under date of the 17th of January, is this item:

"20,000 one cent stamps, (Buck's Stove and Range Co. P. O. Department, \$60)."

Mr. RALSTON: Further objection is made that the dates given are simply the dates of payment, not dates on which the acts were done, as charged in the report of the committee.

Mr. DAVENPORT: In the financial statement for the month of February, printed in the April American Federationist, is the following item:

"Printing 25,000 editorials, reprint, eight pages, Law Reporter Company, \$148.50"

Mr. RALSTON: We offer the same objection to this as was offered to the last.

Mr. DAVENPORT: In the financial statement for the month of January, 1908, published by the American Federationist for the month of March, at page 237, is the following:

"Addressing, stamping, folding, and mailing circulars, Buck's Stove and Range Company case, F. MacCallan, \$26.65; G. O. Kane, \$25.25; Hazel Sprague, \$14.10; A. B. Grace, \$16.87; H. A. Calhoun, \$15.50; Della Sprague, \$14.10; M. Jones, \$32.55; Frank Valesch, \$1.20; B. E. Nabers, \$6.70; total \$152.92."

Mr. RALSTON: We renew our objection to this.

Mr. Davenport next offered in evidence the financial statement for the months of January, February and March, in the American Federationist for March, April and May 1908, which offer was objected to as not relevant to the issues in this suit, and not properly proven. To which Mr. Davenport said that they were introduced as declarations of Mr. Morrison that he received these amounts from these sources. The items specifically referred to by Mr. Davenport, read as follows:

"Arthur E. Holder, Washington, D. C., donation to legal defense fund, \$10."

On the 29th of January began donations from the unions, as follows:

"James Crunkilton, Treasurer of Local 735, donation to legal defense fund, \$3.

"National Brotherhood of Operative Potters, 24, donation to legal defense fund, \$3.

"Brotherhood of Painters, Decorators and Paperhangers of America, Local 213, Donation to legal defense fund, \$10.

"National Brotherhood of Operative Potters, Local 44, donation to Legal defense fund, \$5."

Mr. Davenport also offered from the March Federationist, page 236, as follows:

"500 eight cent stamps, P. O. Dept.—"

"Stamps, 1,000 one cent, \$10; 1,000 two cent, \$20; 200 three cent, \$6; 300 four cent, \$12; 200 five cent, \$10; 500 eight cent, \$40; 300 ten cent, \$30. P. O. Dept., \$140."

"1,000 eight cent stamps, P. O. Department, \$80."

345 Mr. Davenport also offered in evidence from the statement published in the April Federationist of 1908, page 318, the following:

"15 printing and binding 9,000 of the Norfolk Convention, National Tribune Company, \$1,378.48."

To each of these offers respondents' attorneys then and there objected, and likewise objected and excepted to an offer of an entry in the financial statement of the American Federationist for January 1907, page 59, under date of December 29, 1907, as follows:

"Hauling American Federationist, J. W. Bernhard, \$1.75."

The last offer was further objected to as not showing the date when the expenditure was contracted for, or the services rendered, and otherwise immaterial and incompetent.

Mr. Davenport further called the court's attention to similar entries in the financial statements for January, February and March, 1908, to which the objection was interposed that the said items proposed to be proven were not specific, and a blanket introduction of evidence was legally unknown.

346 FRANK B. CROWN being first duly sworn (page 391) testified as follows:

Was foreman of the Washington Law Reporter Printing Company in 1908, printing at that time the American Federationist. Is shown American Federationist for 1908, offered in evidence, and recognizes it as magazine printed for the American Federation of Labor. Supposes article in February number, headed "Urgent Appeal" is a part of the February 1908 number of the American Federationist, being bound with it. Has no recollection of those articles being contained in it. Would say in general appearance that it is the type, but sometimes they had other type. Says that article shown him has general appearance of a reprint of editorial headed "Justice Gould, Supreme Court decision," etc., but from other things would say no. The Union label having no number at all, whereas no job goes out by the Law Reporter Printing Company without the contract number. By an agreement with the allied trades council, the contract number must accompany the label. If somebody else does it, their number should be with it. Whoever publishes it puts the union label and the number on it, the number of his contract, and the number was missing from there, whoever did it, although the union label is there. If it had been done by the Law Reporter Printing Company it would have been there. Knows the print of his office pretty fully. This is not the same type. Has not the type of the Washington Law Reporter office. That is what we would call old style, and the Law Reporter's is

347 Ronaldson. Witness is shown the letter "t," and testified that it is not the same type and has not the same peculiarity. One type is fatter than the other, that is condensed.

(Mr. Darlington asks the examiner to mark with a circle the word "this" in the reprint editorial, shown the witness, being Exhibit A. H. No. 3, Equity No. 27,305, and to mark similarly the word "this" on page 104 of the American Federationist, Exhibit No. 1, Equity Cause No. 27,305, and offers both papers in evidence, which offer is objected to as incompetent, irrelevant and improperly proven.)

Witness states that the Law Reporter office has not the type on which the editorial reprint was done. Does not know whether the editorial was reprinted at the office or not. The books will show. They may have printed an eight page editorial, but to witness's knowledge, had not that type and label does not carry their number. Is not prepared to say it is their job. Does not recall anything about that particular face of type being in the office. Does not know that the reprint was done by the Law Reporter for the Federation of Labor. Does not recognize it by name. Did not say it was not printed there. Could not so swear. Is shown Exhibit A. H. No. 3, Equity No. 27,305, and asked to identify it as work done by the Law Reporter Company for the American Federation of Labor, and in response says they may have printed it, but did not set the type. Witness's attention is called to entry in book showing 25,000- reprint editorial, eight pages, editorial by Samuel

Gompers from the American Federationist, 1908, and asked
348 to say whether that work was done by his Company. Says it may have done the press work, but did not set the type. Is not positive as to the press work. Would say from the entry on the book that they printed some editorial of eight pages. There may have been more — one. Looking at the loose leaf ledger says that 5,000 reprint editorial, eight pages, was also printed from the American Federationist of February, being the same month. Cannot identify them by the word "editorial." Does not find any reprint from the Federationist of eight pages, except in the month of January, and about the time the February Federationist was out. Those are the only two. The February issue is printed in January.

Cross-examination:

Editorials in the February Federationist are printed in ten point type. The pamphlet referred to is not a reproduction of that because it is a leaded article. There is a cut in title in the editorial, and not in the reproduction. May have the display type in the office, but these things cannot be determined until you set your line. The appearance of the face is practically the same, but you could get the same letters together, and it will come either long or short, or be exact, if you have the line. The face type in the editorial is Ronaldson No. 72. In the reprint does not know except old style. The difference is in the capitals. The lower case letters are practically the same all the way through. Cannot tell how many ems there are in the alphabet of either. Does not know how many

there are to the alphabet in his own editorial type. It has
349 to reach a certain standard, and his is up to that. The

Ronaldson is usually larger than the old style and this is a reproduction of the old style instead of Ronaldson. To the printer there is a difference in the *told* style. They would see it at a glance. They would detect one from the other. The face of the circular is larger than the Federationist up and down. The individual type are narrow, and the capital letters are taller and narrower. One measure would be termed a 28 measure and the other 26, a difference of two ems pica. The Federationist is from the Law Reporter

type, hand set. He should say the body of the reprint is machine work. It is absolutely not the same type as the Federationist. One appears to be hand composition and the other machine composition.

(Mr. Davenport calls the court's attention to the entry in a financial statement made by Mr. Morrison, published in the March Federationist, of disbursements during January, under date of January 29th, "binding 400 volumes, 1906-7 proceedings, A. Ziechtel & Co., \$160," to which counsel for respondents object as to the competency and relevancy.

WILLIAM B. WILSON being first duly sworn (page 404) testified as follows:

Is a member of Congress from the 15th District of Pennsylvania, and member of the United Mine Workers of America. Has been a member since January 25, 1890. Has gone as delegate to the conventions of the American Federation of Labor. Attended the convention at Norfolk, 1907, Denver, Colorado, 1908, and Toronto, Canada, 1909. Does not recall whether he served on the

350 Committee on President's report at Norfolk, or not. Has at all conventions since then, in 1908 and 1909. Portions of the report were referred to the Committee and at some of the conventions portions of the Executive Council's report. Does not recall whether there was at all of them or not. Has held office of District President and International Secretary-Treasurer from May 8, 1900, to March 31, 1908. Has attended the conventions of the United Mine Workers. Attended that of January, 1908, at Indianapolis, and acted as Secretary. As International Secretary-Treasurer was not editor of the U. M. W. journal. Was business manager. Is acquainted with John Mitchell. Met him first in 1898 or 1900, not sure which. He became President before witness became Secretary, and retired as President at the same time witness retired as Secretary. Recognizes copy of proceedings of the U. M. W. Convention of 1898, shown him. It was prepared by him as Secretary.

Q. "Will you state whether or not they were issued and distributed to members of that body."

(Respondents' counsel objects as irrelevant and immaterial.)

One copy each was sent to local unions, comprising the U. M. W., and one copy to each of the delegates attending the conventions, and additional copies furnished at what may be determined to be the cost price.

Q. "How many locals were there of the U. M. W. during 1908,"

(Objected to as irrelevant and immaterial.)

Approximately 2,700. Total membership approximately 300,000. At that time there was a committee known as the Committee on Distribution.

351 Q. "Did you serve on that Committee."

(Objected to as immaterial and irrelevant.)

WITNESS: I did.

Q. "What was the function of this Committee on Distribution."

(Objected to as immaterial and irrelevant.)

To take the various resolutions introduced in the convention, classify them in accordance with the subject to which they pertained, and refer them to the Committee dealing with the class of subjects.

Q. "Were these resolutions printed in the daily proceedings of the convention."

(Objected to as immaterial and irrelevant.)

"Yes, sir."

Q. "What was the course pursued in regard to the proceedings of each day. Were they printed and distributed among the members."

(Objected to as immaterial and irrelevant.)

"The proceedings were printed and distributed among the members each day." The proceedings of one day were printed for distribution during the following day. There were different presiding officers at different times. The presiding officer generally was Mr. John Mitchell. At other times he called other persons to the chair. Recalls that a resolution was introduced in the convention relative to the Buck's Stove and Range Company, but does not recall the substance of it. Does not recall Harvey Stroud or Frank Schaefer. Does not recall a resolution being handed him, or its reference by him to a member of the Committee on Distribution. Was present when the Committee reported. Knows William D. Ryan. He acted on that committee and reported the resolutions which were referred to the Committee on Resolutions. Don't recall
352 whether he reported that particular resolution or not. Does not recall the putting of the resolution, or anything pertaining to it, except that it was passed, but when passed upon, or how, witness has no recollection.

Committee offers in evidence proceedings of 19th Annual Convention of the U. M. W. of America, held at Indianapolis, January 21st to February 3rd inclusive, 1908. Identified by Mr. Wilson and marked "Wilson Exhibit No. 1."

(Objected to by respondents' counsel as incompetent and irrelevant so far as any of the issues are concerned, and not the best proof of anything therein contained.)

Recognizes the resolution referred to as being printed on page 259, Wilson Exhibit No. 1, and being resolution 73.

(Mr. Davenport calls attention to the minute on page 258 in regard to President Mitchell, to which respondents' counsel object as not being the best proof of what it purports to contain, being a printed document and otherwise incompetent and irrelevant.)

Does not recollect anything in connection with the passage of the

resolution. Recollects it was introduced and passed, but does not recollect the particular circumstances under which it was passed. Does not recall whether he was present at the convention of the U. M. W. of America, held in Indianapolis, Indiana, January 20, 1909. Was present at some portion of the time. Attended the convention a portion of the time, saw John Mitchell there during that convention. Yes, he met him in the lobby of the

353 English Hotel of Indianapolis. Not quite clear altogether. Thinks he was not present in the convention on January 22, 1908, when John Mitchell made an address. Don't recall having heard him make an address in that convention. Cannot state positively that record shown him is record of proceedings to which it refers, although it is in the usual form in which these proceedings are prepared and printed. Recognizes as a file of the U. M. W. Journal, a book entitled "United Mine Workers' Journal 18, 1907-8, Indianapolis, Indiana," Exhibit Dunnington No. 7. Is in the issue of January 23, 1908. Was business Manager of that journal. It was circulated among the members of the United Mine Workers, among the delegates. The only *circular* is among the subscribers, and at that time the total subscription list amounted to approximately 8,000, so that it was circulated among 3,063, and had a circulation of at least 8,000. The daily proceedings were circulated generally among the delegates. The proceedings were printed daily in pamphlet form, and distributed daily among the delegates. Some proceedings were printed in U. M. W. Journal, which was a weekly publication, and of course went to subscribers. The editor of the U. M. W. Journal had them printed. On page 12 of the Journal of January 23rd, is recited "United Mine Workers' Journal. Published weekly by the National Executive Board of the United Mine Workers of America. S. M. Sexton, Editor; W. B. Wilson, Business Manager." The business manager is witness. At that time John Mitchell was President of the National Executive Board, and witness was Secretary-Treasurer. T. L. Lewis was Vice
354 President. They were all members of the Executive Board that published the paper.

By Mr. DAVENPORT:

"I call your attention now to the record of the proceedings on the fifth day, in the morning, I believe, commencing in the first column on page 7 of the issue of the United Mine Workers' Journal to which I have just called your attention, as follows:

"'Fifth Day—Morning Session.

"'The convention was called to order at 9 a. m., Saturday, January 25, President Mitchell in the chair.'

"'In the second column near the top, is the following:

"'PRESIDENT MITCHELL: The motion is not in order. A motion to non-concur in the report of a committee cannot be entertained. A negative motion is not in order. The effect of defeating a motion to concur in the same as passing a motion to non-concur is the same as passing a motion to non-concur."

"Then a little further down in the same column is the following:
 "Resolution No. 73. Whereas, the Buck's Stove & Range Company, of St. Louis"—

"Mr. RALSTON (interrupting): I object to this indirect way of reading into the record that as to which no competent legal proof has been offered.

"Mr. DAVENPORT (Reading): 'Whereas, the Buck's Stove & Range Company, of St. Louis, Missouri, have taken legal steps to prevent organized labor in general, and the officers and executive committee of the A. F. of L. in particular, from advertising the above named firm as being on the unfair or "we don't patronize" list, and

"Whereas, by the issue of such an injunction or restraining order as prayed for by above-named firm, organized labor will be deprived of one of its most effective weapons, and

"Whereas, J. W. Van Cleave, the President of the above named firm, also President of the National Manufacturers' Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"Resolved, that the U. M. W. A., in Nineteenth Annual Convention assembled, place Buck's stoves and ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above make be fined five dollars and failing to pay same be expelled from the organization.

"HARVEY STROUD.

"FRANK SCHAEFER.

"Endorsed by Local Union 755, Staunton, Illinois.

355 "The Committee recommended concurrence in the resolution.

"On motion of Delegate Walker (J. W.) the recommendation of the Committee was concurred in, the vote being unanimous."

"By Mr. DAVENPORT:

"Q. When did Mr. John Mitchell cease to be the President of the United Mine Workers of America.

"Mr. RALSTON: At this point I move to strike out all that Mr. Davenport has read, as being neither an offer in evidence nor a question to the witness.

"The WITNESS: Mr. Mitchell was President of the United Mine Workers of America until March 31, 1908."

He had an office as President of the U. M. W. of America in Indianapolis, and witness had an office there as Secretary-Treasurer, in the same building.

Q. "Was a copy of this issue kept on file in the office of the Secretary; this issue from which I have read the proceedings, being that issue of the United Mine Workers' Journal of Thursday, January 30, 1908?"

Mr. RALSTON: "The question is objected to because the issue referred to is not in evidence."

The WITNESS: "They were."

(Mr. Davenport offers in evidence the extract from the U. M. W. Journal just read, dated Thursday, January 30th, containing the minutes of 19th Annual Convention of U. M. W. of America, held in Indianapolis, Indiana, January 23rd, commencing with the third days' session and running through the fourth and fifth days.)

Mr. RALSTON: "This is objected to as incompetent and irrelevant and not the best or even proper proof of the matters therein contained."

Directed as manager to have copies of the journal sent to the Congressional Library as they appeared. Recognizes Dunnington Exhibit No. 8, headed "Convention Edition of the Union Mine Workers' Journal, Thursday, January 21, 1909," with stamp of Library of Congress, dated February 3, 1908, as correct. Received the journal throughout the year, but was not at that time Secretary-Treasurer, and do not know what arrangements were made by him. Could not say that he received copy of this issue. Knew at the time that John Mitchell had been found guilty of contempt of court in violation of an injunction by the Supreme Court of the District of Columbia. Recalls that Mitchell attended the convention at Indianapolis, but cannot recall whether it was on the 22nd, or some other day. Does not recall that he went with him to the hall. Does not recall having heard Mr. Mitchell make his speech at that time. Was not there a portion of the time. Does not recall whether he was there at all that day. Witness is shown what was entitled "Proceedings of the Twentieth Annual Convention of the United Mine Workers of America, held at the City of Indianapolis, Indiana, January 22, 1909, Fourth Day, Morning Session," and attention is directed to what appears therein at bottom of page 7, under the heading "Mr. John Mitchell."

(Reference to this was objected to as the paper is not in evidence, and has not been offered.)

Was present and heard Mitchell make that statement.

(The above proceedings were offered in evidence and marked "Wilson's Exhibit No. 2," but objected to as not proper proof, or the best proof of what it purports to contain, and because it is irrelevant.)

Thereupon the Committee offered in evidence therefrom the following extract from the said statement of John Mitchell:

357 "The court says further that I presided as President of the United Mine Workers at a convention here at which a resolution was passed violating that injunction. There are no doubt in this convention hundreds of delegates who were here a year ago who know that I had no knowledge that the resolution was to be introduced. They know I had nothing to do with its preparation, with its consideration, or with its introduction. It came before us as all other resolutions did. As chairman what was I to do? I had, it is true, three alternatives: I might have resigned the presidency of the United Mine Workers of America; I might have been cowardly and called some one else to the chair and let him accept the responsibility—ask some one else to accept the responsibility of what I dared not do myself. Or I might have accepted the last alternative—I might have stood up before you and advocated the cause of

a company that was having trouble with its employees. Does the man who respects us least imagine for a moment I would become the advocate and defender of a company that was at variance with its employees? Would I stand here and fight the cause of a corporation that was trying to destroy the union in its employment? What could I do? What could any self respecting man do? Would he not have done as I did?

"It is true that technically I was guilty of violating the injunction when I presided over the meeting that adopted this resolution; but I am no more guilty than any other man who was present in the convention at that time. Indeed, I presume that before a jury I would be considered less guilty, because I did not vote for it and everyone else did. I did not vote for it because I was presiding.

"The court alleges that some six years ago I wrote a book, and in that book I declared that if a court were to issue an injunction restraining me from doing a thing I had a legal and constitutional right to do, I would violate the injunction; and in a speech made some time afterwards in New York I declared—speaking of injunctions—that if a court enjoined me from doing that which I had a legal and constitutional right to do, I would violate the injunction. I would preserve my liberty. I repeat these declarations now. I repeat them with full knowledge that I may be held responsible for what I say. I am sure you will pardon me if I say that I yield to no man in my love for this country; I yield to no man in obedience to its laws. My father was an American soldier, and I would be an unworthy son of a noble father if I would yield now those priceless concepts of liberty which he and like men fought and gave to us that we might preserve them for our descendants."

358 (To the foregoing respondents' counsel objected unless all the speech were introduced, and gave notice that he would move that it be stricken from the record, page 425).

Do not recall distinctly attending reception in November 1908, in Washington, tendered to Gompers, Mitchell and O'Connell. Recalls attending a reception at the Typographical Union, held at Federation of Labor headquarters, and making an address. Remembers Gompers was there, does not recall Morrison. Has seen a document such as Exhibit De Nedry No. 1, at Indianapolis. Was received by witness as Secretary, and as coming from the American Federation of Labor. Does not recall whether he caused it to be published in the U. M. W. Journal. Does not know whether John Mitchell received one. Does not recall what he did with the circular, or whether it was published in the United Mine Workers' Journal. Does not recall whether there was any response to it, or not. Does not recall whether the document headed "Free Speech and Free Press Invaded by Injunction Against A. F. of L." being Exhibit A. H. No. 3, Albert Harper, Examiner, accompanied the other circular or not. Does not recall having seen it in this form.

(Mr. Davenport reads in evidence from Dunnington Exhibit No. 2, page 38, as follows:

"Our official magazine is a vital necessity to our movement in putting before the toilers and their sympathizers an accurate and

full record of what has already been done by the Federation and what it desires to accomplish. The daily press of the country is known to be largely hostile to our movement and to delight in misrepresenting and abusing our motives. The American Federationist offers the channel through which, by editorial and by well selected contributions, the rank and file of our members
 359 and the masses of the people are educated and informed as to our aims and purposes. So great has been the pressure of important matters, especially during the past year, that I have been obliged to add to the size of our magazine over and over again in order that our members and friends might be informed of official action of the Federation, and that its officers might tender the advice and counsel which it is their duty to give.

"The American Federationist performs a service which will be more and more appreciated as *to* the present events of our movement pass into history. It is the official, full and accurate record, not only of all that is done by the Federation, but a true reflection of the sentiments and hopes and aims of the toilers and their sympathizers. Through the American Federationist we have been able to secure far better reports from the daily press than would otherwise have been possible. By giving the copies of our printed circulars and the editorials to the press, they are obliged to quote accurately or not at all. In the past year the editorials of the American Federationist have been quoted more widely than those of any other magazine in existence.

"The labor press and official journals of the trades unions have reprinted selected articles, circulars and editorials of the American Federationist very widely, thus greatly increasing the opportunity to reach all the people.

"I have endeavored to give my best thought and all the power I possess to the editorial work of the magazine, and the appreciation which it has received has made me feel that I have been fairly successful in voicing the desires and demands of the workers."

Mr. RALSTON: "I give notice I shall move to strike out that part which Mr. Davenport has read as having no relevancy whatever to the issues involved in this case, and as only introduced by him for argumentative purposes."

Mr. DAVENPORT: "That is the declaration of Mr. Gompers in regard to this business, I take it."

By Mr. DAVENPORT:

Q. "On page 15 of the same issue, Thursday, January 30, 1908, of the United Mine Workers' Journal, marked Dunnington Exhibit No. 7, in the last column and in the four succeeding columns on the next page, under the head, "An Abuse on Injunction—
 360 Free Press and Free Speech Invaded by Injunction against A. F. of L.—Samuel Gompers Expresses His Views in American Federationist," is published the editorial referred to in the February Federationist and referred to in the president's report to the convention of 1908."

Mr. RALSTON: "I move to strike out the statement made as not evidence."

Mr. DAVENPORT: "I would offer that in evidence and ask that the stenographer may copy it into the record."

Mr. RALSTON: "We object to it as irrelevant to the issues in this case, having no function here except it be an argumentative one to assist Mr. Davenport in his final argument."

Mr. DAVENPORT: "One of the allegations in our charges is the doing of this very thing as a consequence of what was done by Mr. Gompers. I will state what is in the charges, if you are not familiar with them."

(The article referred to, on page 15 and 16 of the United Mine Workers' Journal of Thursday, January 30, 1908, is in the words and figures following, to wit:)

"Article of Injunction.

Free Press and Free Speech Invaded by Injunction against the
A. F. of L.

A Review and Protest.

Samuel Gompers Expresses His Views in American Federationist.

"Justice Gould of the Supreme Court of the District of Columbia, issued an injunction, on December 18, 1907, against the American Federation of Labor, and its officers, and all persons within the jurisdiction of the Court.

"This injunction enjoins them as officials, or as individuals, from any reference whatsoever to the Buck's Stove and Range Company's relations to organized labor, to the fact that the said company is regarded as unfair; that it is on an 'unfair' list, or on the

361 "We don't patronize" list of the American Federation of Labor. The injunction orders that the facts in controversy between the Buck's Stove and Range Company and organized labor must not be referred to, either by printed or written word or orally. The American Federation of Labor and its officers are each and severally named in the injunction. This injunction is the most sweeping ever issued.

"It is an invasion of the liberty of the press and the right of free speech.

"On account of its invasion of these two fundamental liberties, this injunction should be seriously considered by every citizen of our country.

"It is the American Federation of Labor and the American Federationist that are now enjoined. Tomorrow it may be another publication or some other class of equally law abiding citizens, and the present injunction may then be quote- as a sacred precedent for future encroachments upon the liberties of the people.

"With all due respect to the Court it is impossible for us to see how we can comply with all the terms of this injunction. We would not be performing our duty to labor and to the public without discussion of this injunction. A great principle is at stake. Our forefathers sacrificed even life in order that these fundamental constitutional rights of free press and free speech might be forever

guaranteed to our people. We could be recreant to our duty did we not do all in our power to point out to the people the serious invasion of their liberties which has taken place. That this has been done by judge-made injunction and not by statute law makes the menace all the greater.

"There is no law in our country and we feel safe in saying that no law could be passed by the consent of the people which would deny to the humblest citizen the right of free expression through speech or by means of the press, and yet this is now attempted by injunction. There is no disrespect to the judge or the court when we state with solemn conviction that we believe this injunction to be unwarranted.

"Suppression of freedom of the press is a most serious thing whether occurring in Russia or in the United States. It is because the present injunction commands that that we feel it our duty to enter an emphatic protest.

"It has long been a recognized and an established principle that the publisher should be uncensored in what he publishes, although he may be held personally and criminally liable for what he utters.

"If what is published is wrong or false it is within the power of the courts to punish by using the ordinary process of law, but not by a judge-made injunction.

"The publication of the Buck's Stove and Range Company on the 'We don't patronize,' list of the American Federation of Labor 362 is the exercise of a plain right. To enjoin its publication is to invade and deny the freedom of the press—a right which is guaranteed under our constitution.

"The right to print which has grown up through the centuries of freedom, has its basis in the fundamental guarantees of human liberty. It has been defended and upheld by the ablest minds. It ought not to be forbidden by judicial order.

"The matter of attempting to suppress the boycott of the Buck's Stove and Range Company, by injunction, while important, yet pales into insignificance before this invasion and denial of constitutional rights.

"We shall consider this question fully, and we urge the most serious and careful thought on the subject by our fellow workers and fellow citizens.

"For years we have pointed out the fact, and we believe the great part of the intelligent public are in entire accord with us, that the injunction process was originally intended to apply to property rights only, and never was intended to interfere with personal rights—personal liberty. In fact, it never is applied to the personal rights and liberties of citizens other than if these citizens are wage workers.

"We discuss this injunction and feel obliged as a matter of conscience and principle to protest against its issuance and its enforcement, yet we desire it to be clearly understood that the editor of the American Federationist does not consider himself thereby violating any law of either state or nation, nor does he intend to advise any disrespect towards the courts of our country. And yet inherent,

natural, and constitutional rights and guarantees must be defended and maintained.

"The men composing the organizations federated in the American Federation of Labor are as law-abiding, as honorable, and as upright as can be found in any walk of life.

"In the application for the injunction it was alleged by the Buck's Stove and Range Company that its business had suffered seriously from the refusal of union workmen and their friends to purchase its stoves and ranges. But would not absolute silence on our part as to its hostile attitude toward certain union employees be dishonest? Why should we encourage our members and friends to buy the Buck's Stoves and ranges under the apprehension that this company deals fairly with union labor? Could not union employees then accuse us of an unfair discrimination, of trickery and humbug?

263 "If Mr. Van Cleave's opposition to the union shop is a matter of honest and conscientious conviction we should think he would writhe in pain under an injunction which prevents the publication of that fact.

"The injunction is printed in full in this issue of the American Federationist. We hope our readers will study carefully every word and every phrase. It is a most remarkable injunction.

"Justice Gould seems to base this injunction on the assumption that there has been a combination of members of wage earners 'conspiring' to commit unlawful acts. Such is not the fact. The public should understand clearly the difference between combinations for unlawful purposes and the voluntary associations of wage earners for entirely lawful and proper purposes.

"Let us for a moment consider what are some of the aims and purposes of our labor movement: to render means and opportunity of employment less precarious; to improve the standard of life; to uproot ignorance and foster education, to establish a normal work day; instil character, manhood and an independent spirit among our people; to establish the recognition of the interdependence of man upon man, and that no man can be sufficient unto himself; that he must not shirk a duty to his fellows; to take children from the factory and the workshop, the mill, the mine, and to give them the opportunity of the school, the home and the playground. In a word, to lighten toil, brighten man, to cheer the home and the fire-side, to contribute our effort to make life the better worth living. To achieve these ends, all honorable and lawful means are not only justifiable, but demandable, and should receive the sympathetic support of every right thinking American, rather than bitter relentless antagonism.

"But to return to the consideration of the injunction, Justice Gould quotes Judge (now Secretary of War) Taft's definition of a boycott as follows:

"A boycott is a combination of many to cause a loss to one person by coercing others, against their will, to withdraw from him their beneficial business intercourse through threats that unless those others do so that many will cause serious loss to them."

"Justice Gould adopted this definition in preference to that found

in the cyclopaedia of pleadings and practice and seemed to feel that Judge Taft furnished an illustrious precedent for the granting of this injunction.

"True, Secretary Taft has an injunction history (see *American Federationist*, Editorial, October and November, 1907,) but since he has become a candidate for president, he does not seem proud of that record. He has recently tried to 'explain' and not very successfully, because he, like many other injunction judges, did not think it necessary, before granting sweeping injunctions, to acquire a knowledge of modern economies and the proper application of judicial principles thereto. Is Judge Taft the highest authority on what constitutes a boycott or grounds for an injunction of this character?

"The very injunction proceedings from which Justice Gould quoted Judge Taft and other precedents he mentions, were cases in which the injunction privilege was abused by being wrongfully applied. Two wrongs do not make a right in an injunction any more than other affairs of life.

"Secretary Taft says a boycott is a combination of many to cause a loss to one person by coercing others against their will to withdraw from their beneficial business intercourse by threats.

"We defy anyone to prove a single instance in this case where men or organizations combined to 'coerce' others against their will to withdraw patronage from the Buck's Stove and Range Co. Neither coercion, threats, nor conspiracy, in the lawful sense, have been resorted to, yet the whole injunction is based upon this wrong assumption.

"Our unions and the men of labor are doing a public service in informing fellow workers and friends of the fact that certain employers refuse to recognize the associated effort of the workers. This very class of employers organize themselves into combinations and vigorously use the secret blacklist to hound good citizens and union men from employment. They use every weapon, lawful and unlawful, to crush unions. No wonder they are ashamed to have their tactics made public.

"The members of organized labor are not themselves obliged to refrain from dealing with the firms on the 'We don't patronize' list of the American Federation of Labor. The information is given them. There is no compulsion. They are entirely free to use their own judgment.

"It must be remembered, however, that for the one firm which declines to employ union labor, there are probably a score in the same business which prefer it on account of its greater skill and reliability, and for many other sound, economic reasons. Such firms are conceded to turn out a higher quality of product than non-union concerns. The members of organized labor naturally desire to expend their earnings to the best advantage when purchasing and wish to be informed as to what firms do and do not employ union labor. In purchasing, it is often a question of the quality of the goods offered. The 'boycott' is a letting alone of undesirable goods.

"No person can be compelled to buy an article. If the purchaser

365 chooses to let alone certain products for any reason, or for no reason, there is no way of compelling him to buy.

"This injunction cannot compel union men or their friends to buy the Buck's stove and ranges. For this reason the injunction will fail to bolster up the business of this firm which it claims is so swiftly declining.

"Individuals as well as members of organized labor will still exercise the right to buy or not to buy the Buck's stoves and ranges. It is an exemplification of the saying that:

"You can lead a horse to water, but you can't make him drink'.

"And more than likely these men of organized labor and their friends will continue to exercise their right to purchase the Buck's stoves and ranges.

"It may not be amiss here to say that in all these proceedings, whether before the Court or in the contest forced upon labor by the Buck's Stove and Range Company, no element of personal malice or ill-will enters. Labor is earnestly desirous of entering into friendly relations with employers and this is none-the-less true of its desire to reach an honorable adjustment and agreement with the Buck's Stove and Range Company. So long, however, as the company continues in its hostile attitude to labor, denying it the right to organize, discriminates against union members and refuses to accord conditions of employment generally regarded as fair in the trade, it must expect retaliatory measures; these measures always, however, within the law and for the purpose of ultimately reaching an honorable, mutually advantageous agreement.

"The publication of the Buck's Stove and Range Co. of the 'We don't patronize' list of the American Federation of Labor is only an incident in the history of the case. These stoves might have been let as severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing that firm from the list against which we primarily protest, it is this injunction invading the freedom of the press.

"Justice Gould, in one portion of his opinion, says:

"Defendants (The American Federation of Labor) have the right either individually or collectively to sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves."

Here he states precisely the whole case of the American Federation of Labor. This is what we have done. This is the sum total of labor's offending. The publication of the Buck's Stove and Range Company and other firms on the 'We don't patronize' list is merely giving truthful information at the request of our members as to whether or not certain firms employ union men and concede the other conditions of employment usually granted by those concerns which recognize union labor.

366 "It would seem that having made the above quoted statement, Justice Gould would have found in it the reason for a refusal to issue the injunction. He, however, goes on to assume that there has been some unwarrantable interference with the

plaintiff's business, though neither in his opinion nor in the injunction itself does he make it clear how he arrived at the conclusion that the union course was any other than as indicated in its own language.

"We wish to point out that there exists no law under which we could have been haled before any court for the exercise of free speech and freedom of the press in order to explain to our fellow workers and friends the circumstances under which the Buck's Stove and Range Co. manufactures its goods, and its attitude toward labor. Yet, under the terms of this injunction, we are peremptorily cut off from the exercise of these rights. We have had occasion in the past to call attention to the fact that the danger of the injunction, as used in labor cases and in no other, is that persons are often forbidden the doing of perfectly lawful things—are enjoined from the exercise of their rights as citizens, and then found in contempt and punished if they fail to submit to the course laid down in the injunction mandate.

"It is puzzling to be charged with coercion, conspiracy and what-not, and enjoined from the exercise of free speech and free use of the press just as if we had been guilty of those things of which we are entirely innocent.

"It is true that there do exist illegal combinations and conspiracies for the purpose of unwarrantable interference with business or even in its destruction, but those are not organized by wage workers. The criminal conspiracies in restraint of trade are organized by a pirate trust, by rascally promoters, by unscrupulous manipulators of finance.

"The air is filled with the lamentations of the innocent victims of such conspiracies, but do we ever hear of these pirates in the business world being enjoined from continuing their depredations or threatened with contempt proceedings if they do not desist from their unlawful practice which even involve property rights.

"Never! These injunctions are applied to wage workers exclusively, though they involve personal rights and liberties. It is this denial of equality before the law against which we protest.

"In making these statements we are not indulging in unjustifiable or disrespectful criticism of the judge who issued this injunction. We assume that he acted in accordance with the dictates of his conscience and his best judgment.

"One point we have been making for years in regard to other injunctions is equally applicable to this case. We contend that the power to issue injunctions involving personal rights and liberties should not be left to the discretion of any judge, no matter how wise, how discreet, or how learned.

"President Roosevelt in his recent message to Congress 367 made the following comment on the abuse of the injunction power:

"Instances of abuses in the granting of injunctions in labor disputes continue to occur, and the resentment in the minds of those who feel that their rights are being invaded and their liberty of action and of speech unwarrantably restrained, continue likewise to

grow. Most of the attack on the use of the process of injunction is wholly without warrant; but I am constrained to express the belief that for some of it there is warrant. This question is becoming more and more one of prime importance, and unless the courts will themselves deal with it in an effective manner, it is certain ultimately to demand some form of legislative action. It would be most unfortunate for our social welfare if we should permit many honest and law-abiding citizens to feel that they had just cause for regarding our courts with hostility. I earnestly commend to the attention of Congress this matter, so that some way may be devised which will limit the abuse of injunctions and protect those rights which from time to time is unwarrantably invaded. Moreover, discontent is often expressed with the use of the process of injunction by the courts, not only in labor disputes, but where state laws are concerned.

"We earnestly hope that public opinion on this subject will be so compelling, so widespread, and so intense, that Congress will at an early date crystal-ize into statute law the expression of this feeling by enacting the American Federation of Labor bill 'To limit and regulate injunctions,' which is designed to restrain the improper use of the injunction power and to protect rights which have been unwarrantably invaded.

"It is our earnest hope that our protest of today in behalf of justice and right may find expression in the laws of tomorrow.

"We have already stated that the case of the Buck's Stove and Range Company against the American Federation of Labor and its officers is represented by able counsel. Additional counsel, foremost at the bar of our country, has been added. Regardless of any phase which the case may assume, it will be continued by the American Federation of Labor until a final decision has been rendered by the Supreme Court of the United States.

"We repeat here what we have elsewhere said, that when the true historian shall present to the world the great struggles of the past and the present; when the tinsel and false coloring shall have been removed from the real figures and events, there will be revealed to mankind's astonished gaze the continuous struggle of labor against tyranny, brutality, and injustice; the struggle for the right, for humanity, for progress, and for civilization. The trade unions and the federation of our time are in their very essence, 368 the continuity of the historically developed progress of labor through the ages. We cannot stop, we must go on."

(In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove and Range Co. declares that punishment for violation of the injunction issued by Justice Gould against the American Federation of Labor applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Co-

lumbia. Counsel for the American Federation of Labor assures us that this construction of the court's order is accurate.)

("Heavy type in brackets are ours.")

Has no knowledge as to how that editorial came to be published in that issue of the U. M. W. Journal. Was the Secretary-Treasurer who received the urgent appeal. That does not serve to bring to his mind the fact that he received Exhibit A. H. No. 3, in Equity No. 27,305.

Cross-examination :

Does not think John Mitchell was present for any considerable time at the U. M. W. Convention in 1909. Does not recall his condition of health in 1909. It was very poor in January 1908. He was absent from the convention frequently because of his health, frequently leaving the convention before its sessions were concluded. Thinks he had been at the hospital before the convention of 1908. Not quite clear. He had just been subjected to a serious operation. Does not know whether or not some time previous to its meetings he had performed the ordinary duties of Vice President of the American Federation of Labor. Knows that for some time prior he was not able to perform ordinary duties of President of U. M. W. Had been in the hospital for some weeks.

Redirect :

His report will show who presided at the opening of the session. Knows that John Mitchell presided at some of the meetings, but also knows that he did not preside at all. That is a matter of independent recollection. Does not recall any day when he was absent for an entire day, but he was frequently absent for part of a day.

Recross :

Did not personally keep the minutes of the convention. Was not Secretary Treasurer in 1909, and did not keep any of the records at that time.

DENNIS F. MANNING (recalled, page 449).

In the single bound proceedings, that is in paper, there are 920 copies of the proceedings of the convention of 1907 still at headquarters, in sets two years bound together, for distribution to colleges, universities and schools, there are 354 copies. That is of the conventions of 1906-7. Out of the number that was printed about 400. Has not been able or did not attempt to learn how many were received at headquarters. Does not recall that he ever before counted the number of the proceedings of the convention in his possession. May have, as occasionally stock is taken. Does not recall that in September 1908, Morrison applied to him for information. That has frequently happened in other things. Cannot recall that he gave him such information as to the time and number received, and number still left in September 1908. They all passed through that particular department, that is, he judges

they did. About nine cents is required to send out that document. Assuming it weighs a pound, it requires eight cents. The 9,000 copies would be placed in the basement. Does not recall whether they came in in instalments, but probably did. Does not know that there was any extra large number printed. Whatever the number was, it was to be distributed. That was the purpose of the printing. They were to be distributed to the delegates, to affiliated organizations and those who purchased. Is not sure that they do go to the organizations. There may have been times when they did not. Could not say exactly. Cannot say how many organizations there was in the Federation. Imagines around a thousand. Could not say whether one copy of these proceedings was sent to each organizer. Witness supposes it was his duty under Mr. Morrison to send them out, that it was part of the work under the particular bureau he was employed in. In September 1908, he was in charge of this property under the Secretary who was in charge under the Constitution. Cannot recall sending out any particular one copy. Witness was in charge of the department, receiving these proceedings when delivered by the Tribune Printing Company. There
371 was others who could receive them as I would.

Cross-examination:

Does not recall receiving any instructions to send these proceedings out, from anybody. Does not recall receiving instructions either way, it was a matter of routine work.

Q. "Did you receive any instructions so far as the Federationist was concerned?"

Mr. DAVENPORT: "I object to that. I object to this question being put as not legitimate cross examination and an attempt to put in the case of the defendant, if it has one at an improper time."

The COURT: "No connection having been shown between it and the direct examination, the objection is sustained."

Mr. RALSTON: "To which we except."

The COURT: "If you desire to present the same question on the final hearing as part of the examination of this witness, you may do so then."

372 LOUIS A. STERNE being first duly sworn (page 455) testified in substance as follows:

Is employed at the headquarters of the American Federation of Labor, and was at said headquarters in December 1907, and January 1908, at 423 G Street, N. W. In 1907 was file clerk, taking charge of correspondence. The Federationist did not come under him, as he recollects, with the distribution of it by mail or delivery. Cannot tell at that time whose business it was to receive them. Remembers seeing a copy of the January 1908 Federationist. There is a long hall through the center of the building. At the rear was a room with a large number of stenographers and typewriters. To the left was a room occupied by Mr. Gompers, and his private Secretary, Miss Guard. There may have been on January 2, 1908,

a large quantity of the Federationists in the hallway, but don't recall it.

Cross-examination:

Q. "Did you receive at any time any instructions in regard to the American Federationist for January 1908."

Objected to on the ground that the question was not germane to anything asked on the direct examination of the witness; objection sustained and exception noted by respondents' counsel.

Miss ROSA LEE GUARD being first duly sworn (page 459) testified in substance as follows:

Is employed at the Federation headquarters. Was so employed in December 1907 and January 1908, as Mr. Gompers' private secretary. Does not remember any particular circumstances attending the issue of the Federationist for January 1908.

373 Selling of them does not come under her work. Does not recall that she did. Her office or room was immediately adjoining Mr. Gompers' room, west of the Hall. Does not recall that any one else had a seat there. Does not recall that on January 2, 1908, a gentleman called at the office and seeing a pile of Federationists in the hall, from thirteen to twenty feet high, applied to her for a copy. Does not recall that she took his name and sold him two copies, and kept the record. Does not remember anything about it. Was a good while ago, and anything like that would be merely routine. Does not know anything about any individual who was connected with the office at that time, who had charge of the Federationist. Regarded that as being in the charge of Secretary Morrison and under his direction. Presumes it would be the shipping clerk. Thinks Mr. Manning was in charge of it at that time, is not sure. He was in charge of it at that time, is not sure. He was in charge of the shipping department for the American Federation of Labor. Everything that was sent out was from the shipping department. All things attending the circumstances of the issuance was so much a matter of routine in the office that she does not recall anything particularly, except one instance which was so unusual it made an impression on her mind. There was a gentleman named Bernhart connected with the Federation of Labor in 1907 and 1908.

JOHN E. GILES being first duly sworn (page 463) testified in substance as follows:

Is bookkeeper for the Federation of Labor, at the present time; employed by Morrison and Gompers. Was in the file department 374 in 1907 and January 1908. Knew a man named J. W. Bernhart who was bookkeeper then. Knew that he was bookkeeper. Don't know who did the hauling for the Federationist; worked in the file department and that did not come under his work. The file department pertains to the correspondence.

Miss JOSEPHINE T. KELLY being first duly sworn (page 465) testified in substance as follows:

Is employed at the headquarters of the American Federation of Labor, and was so employed during the years 1907 and 1908, as a stenographer, under Mr. Frank Morrison, and in such capacity attended the Convention of the American Federation of Labor at Denver, Colorado, November 1908, and Toronto, Canada, in 1909. Had nothing to do with the reporting. Stenographic work at those conventions was done by Mrs. Mary Burke East, with the assistance of a typewriter in transcribing.

Miss Daisy L. Bradley, in the employ of the Federation of Labor, attended the convention at Norfolk. Witness's duties called her to the convention headquarters daily. At 425 G Street, her desk was to the left of the entrance, the next room to Mr. Morrison. On the right, as one entered, was a room occupied by Mrs. Valesh, as assistant editor of the Federationist. Miss Neilson and Mrs. Thomas occupied the room with her. They are still there, but not Mrs. Valesh. Does not know where Mrs. Thomas is. Cannot remember if any person came to her in January 1908 to purchase a copy of the Federationist for that month. Cannot say
375 whether there was a record kept of all the sales. The Federationist department might know about it—Mrs. Thomas, Miss Neilson or Mr. Manning might know. Mr. Manning had charge of the shipping department at the time, but cannot say would know about the sales. Witness is stenographer or secretary to Mr. Morrison. Cannot give any information as to where Mr. Morrison got the data as to sales and shipments of the Federationist for January 1908. The only place a record would be kept would be in the Federationist department, or Mr. Manning's department.

ARTHUR E. HOLDER being first duly sworn (page 469) testified in substance as follows:

That he was one of the members of the Legislative Committee of the American Federation of Labor. Thinks he was at the headquarters the whole of January 1908. Thinks he has seen copies like the De Nedry Exhibit No. 1, entitled "Urgent Appeal for Financial Aid." Cannot tell where. Could not say if he received one. Has seen in the office document marked Exhibit A. H. No. 3, Equity 27305. Nothing like it came to his house. In January 1908, cannot say the exact date, made a donation of \$10.00 to the legal defense fund. It was a general sentiment call; no special request. Knows that there was a call, but cannot just now tell specifically how. Got those circulars and the other news. It was a matter of general knowledge. It was accidental that he headed the list, but is glad of it. Thinks he saw that (referring to paper shown him) around the office. Cannot say now. Undoubtedly saw more
than one. Never saw them in packages, or circulated
376 freely. Could not recall to give further information. Have seen all the proceedings of the convention that have been printed, including that for 1907. Believes he was home the whole of January 1908, cannot say for sure, might have been away a day

or so, or half a day. Cannot recall seeing these proceedings there at that time.

Mr. Davenport (page 474) offers in evidence United Mine Workers' Journal, dated Thursday, January 28, 1909, and reads from page 7, second column, in support of the charge that the Mitchell statement appeared also in that Journal, to which Mr. Ralston objects for the respondents as to its competency and relevancy, and because it did not come within the dates to which contempt has been charged.

Whereupon the following colloquy occurred:

Mr. DAVENPORT: This was before any action by the court of appeals. This is in January, 1909.

Mr. RALSTON: The contempt charged was within a period of three months, and the evidence proposed to be introduced was published—

Mr. DAVENPORT: This is alleged in the charges as one of the contempts committed.

Mr. RALSTON: It is a legal impossibility, but I do not desire to interrupt you.

Mr. DAVENPORT: I read, as I say, from the second column of the seventh page, near the bottom.

Mr. RALSTON: I wish to add further that no connection is shown between Mr. Mitchell and this publication, as a further reason for the objection.

Mr. DAVENPORT: The allegation is that it was published and I propose to prove this.

377 (Reading): "The court says, further, that I presided as

President of the United Mine Workers at a convention here at which a resolution was passed violating that injunction. There are no doubt in this convention hundreds of delegates who were here a year ago who know that I had no knowledge that the resolution was to be introduced. They know I had nothing to do with its consideration or with its introduction. It came before us as all other resolutions did. As Chairman what was I to do. I had, it is true, three alternatives: I might have resigned that presidency of the United Mine Workers of America; I might have been cowardly and called someone else to the chair and let him accept the responsibility—ask someone else to accept the responsibility of what I dared not do myself. Or I might have accepted the last alternative—I might have stood up before you and advocated the cause of a company that was having trouble with its employees. Does the man who respects me the least imagine for a moment that I would become the advocate and defender of a company that was at variance with its employees? Would I stand here and fight the cause of a corporation that was trying to destroy the union in its employment? What could I do? What could any self respecting man do? Would he not have done as I did?

"It is true that technically I was guilty of violating the injunction when I presided over the meeting that adopted this resolution; but I am no more guilty than any other man who was present in the convention at that time. Indeed I presume that before a jury

I would be considered less guilty, because I did not vote, and everyone else did. I did not vote for it, because I was presiding."

Mr. RALSTON: Notice is given that a motion will be made to strike that out, on the further ground that it is but part of an address, and the original entire address is not offered in evidence.

JOHN KIRBY, JR., being first duly sworn (page 476) testified in substance as follows:

Is President of the National Manufacturers Association, and identifies pamphlet entitled "American Industries," dated January

1, 1908, which is offered in evidence on behalf of the committee, in connection with a statement which the committee said was published by counsel for the Buck's Stove and Range Company in regard to the meaning of the injunction and certain things were done by Mr. Gompers.

To the foregoing offer respondents' counsel objected as incompetent, immaterial and not relating to any averment tending to support the charges of contempt which are attempted to be made; as not the proper proof of whatever it is attempted to be made proof of, the right being reserved to interpose such other and further objections as may appear to be proper when the purpose of the presentation is clearly disclosed.

Subject to which objection, Mr. Davenport reads as follows:

"The boycott decision. Its meaning and penalty.

"It is important to everyone interested to understand that though this decree was made by the Supreme Court of the District of Columbia, and its power to punish for contempt is limited to such persons as it may at any time find within the territorial limits of the District of Columbia whether they reside within or without the District of Columbia, the decree itself is binding upon all persons comprised within its terms including all the individual members of the American Federation of Labor wherever they reside and all other persons who have heretofore acted or hereafter act in concert with the defendants named in the decree in carrying out the boycott therein enjoined.

"It is important also for every person to know that it is a criminal offense under the statutes of the United States, punishable by imprisonment in the penitentiary for not more than three years, for any two or more persons anywhere in the United States to conspire together to evade or defeat this decree by doing any of the acts prohibited by it, and they are liable to prosecution therefor by the federal authorities. It is within the power and will be the duty of the federal authorities to protect the dignity of the Supreme Court of the District of Columbia against all attempts to defeat the course of justice in that Court by the doing by anybody at any place of the acts prohibited by said decree.

(Signed)

DANIEL DAVENPORT,

Of Counsel."

Mr. Ralston moved to strike out the foregoing on the ground, in addition to those stated, that a misinterpretation or a failure to com-

prehend the legal opinion given by Mr. Davenport was not a contempt of court nor evidence of it.

Thereupon, Mr. Davenport offered in evidence in support of the allegations of the charge, the following from the February 1908 *Federationist*, page 114:

Order Granting Injunction.

In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove and Range Company declares that punishment for violation of the injunction issued by Justice Gould, against the American Federation of Labor, applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation of Labor assure us that this construction of the court's order is accurate.

The Injunction—Buck's Stove and Range Co. vs. American Federation of Labor.

This cause coming on to be heard upon the petition of the complainant for an injunction pendente lite as prayed in the bill, and the defendant's return to the rule to show cause issued upon the said petition, having been argued by the solicitors for the respective parties, and duly considered, it is, thereupon by the court, this 18th day of December, A. D. 1907, ordered that the defendants, The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton, O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper, and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's *factory* or business by defendants, or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails, or in any other manner any copies or copy of the American Federa-

tionist, or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize," or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement or notice of any kind or character whatsoever, calling attention of the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product or that the same are, or were, or have been declared to be "Unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever, from buying, selling or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the state of Missouri, or in other states and territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid.

380 And it is further ordered by the court that this order shall be in full force, obligatory and binding upon the said defendants and each of them, and their said officers, members, agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them, upon the service of a copy thereof upon them or their solicitors or solicitor of record in this cause; Provided, The complainant shall first execute and file in this cause, with a surety or sureties to be approved by the court or one of the justices thereof, an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitably suing out this injunction, and stipulating that the damages may be ascertained in such manner as the justice of this court shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

(Signed)

ASHLEY M. GOULD, *Justice*.

381 To the foregoing offer Mr. Ralston objected as irrelevant, not tending to support any charge of contempt, and not admissible in evidence against any one of the defendants, as presented.

Mr. Davenport offered in evidence, Section 4, Article 9 of the Constitution of the A. F. of L., in force in 1907 and 1908, reading as follows:

"The Executive Council shall also prepare and present to the Convention, in printed form, a concise statement of the details leading up to approved and pending boycotts (and all matters of interest to the Convention), and no indorsement for a boycott shall be considered by the Convention except it has been so reported by the Executive Council."

To the foregoing Mr. Ralston for respondents objected as antedating any of the charges here, and not being a contempt or tending to sustain a contempt.

Mr. Davenport offered in evidence a portion of the printed report of the Executive Council made to the Convention of 1907, signed by Samuel Gompers, John Mitchell, et al., Executive Council, A. F. of L., and read from page 90 and 91 as follows:

"Van Cleave's Buck Stove Suit against A. F. of L.

"You have already been made acquainted with the fact that the Buck's Stove and Range Company has brought suit against the Executive Council of the American Federation of Labor and other affiliated organizations both in their official and individual capacity. The president of the company is Mr. Van Cleave, who is also president of the National Association of Manufacturers, and vice president of the so-called Citizens' Alliance and other organizations whose main mission seems to be the effort to crush out the only defensive organization of the working people, the trade unions, local, national and international and federated into the A. F. of L. In connection with the suit Mr. Van Cleave for the company has secured an order

382 from Justice Clabaugh of the Supreme Court of the District of Columbia for us to show cause why an injunction should not be issued restraining us from publishing the Buck's Stove and Range Company upon the 'We Don't Patronize' list of the American Federation of Labor and to enjoin all labor organizations or labor men from doing anything or saying anything whether orally or in print in furtherance of the purpose to secure better recognition by the company referred to for a satisfactory adjustment of existing disputes between the union particularly in interest and the company.

"Owing to the fact that the officers, party to the suit, have been so engrossed with their ordinary official duty, as well as their work in preparation for this convention, and the convention itself, our Counsel on last Friday asked for a continuance, that is, a postponement of the hearing upon the proceedings to show cause why an injunction should not be issued until the close of the convention. The case was formerly before Chief Justice Clabaugh of the Su-

preme Court of the District of Columbia. It is now before Justice Gould of that court. The latter granted a continuance, but only until Thursday morning, November 14th.

"The suit by Mr. Van Cleave of the Buck's Stove and Range Company against our movement is to deprive us of the rights to which we are entitled, the right of free association, free speech, and the freedom of the press, and with all the power which wealth gives our opponents, the exercise of all that power to antagonize our laudable movement and its purposes, they would invoke the aid of the courts and seek to persuade the perversion of law to render futile the lawful and proper means to protect the working people of our country from tyranny, greed and injustice. The full statement of the case and the principles and results involved in this suit of Mr. Van Cleave of the Buck's Stove and Range Company are fully covered in the report of President Gompers to this convention."

* * * * *

"We Don't Patronize List.

"Applications to endorse the placing of the following firms upon the unfair list of the American Federation of Labor have been made to and approved by the Executive Council from October 1, 1906, to October 1, 1907:"

Here follows a number of names of those referred to.

To the foregoing Mr. Ralston objected as incompetent and irrelevant and for other reasons stated *as* regard to the last offer.

383 Mr. Davenport offered in evidence from the report of Mr. Gompers to the convention of 1907, at page 37, as follows:

"In the case in point, the suit brought against us by the Buck's Stove and Range Company, another and exceedingly important feature is involved. It is a blow aimed at the freedom of speech, the freedom of assemblage, the freedom of thought, and particularly the freedom of the press.

"The Constitution of the United States and the constitution of every state of the union are in accordance with it, in clearly justifying labor's contention.

"The first amendment to the constitution of the United States provided that, 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.'

"The attempt to enjoin or prevent the publication of the 'We Don't Patronize' list of the American Federation of Labor, whether by injunctive process or other judicial or legislative means, would be in direct violation of the constitutional guarantee and would indeed abridge free speech and a free press. In all the land there is neither law nor power to enforce such a decree."

To the foregoing offer Mr. Ralston objected on the grounds stated with reference to the last preceding offers.

Mr. Davenport offered in evidence a portion of the report of the Executive Council to the Denver, Colorado Convention of November 9 to 21, 1908, reading from page 80.

"The Norfolk Convention authorized the Executive Council to levy an assessment upon all affiliated organizations for one cent per member for a legal defense fund in the injunction proceedings brought by the Buck's Stove and Range Company, and authorized the levying of such additional assessments as may be necessary. We levied but one assessment of one cent per member, and preferred to issue an appeal for voluntary contributions for the legal defense fund rather than to levy another assessment. The total receipts on this assessment and voluntary contributions amounted to \$27,487.96."

384 Mr. Davenport stated in connection with the foregoing that it was signed by the Executive Council, including Gompers, Mitchell and Morrison.

To this statement Mr. Ralston objected, there being no evidence upon that point.

Mr. Davenport offered in evidence from page 92, second column, in the same publication, the following:

"The original injunction not only prohibited the publication of the Buck's Stove and Range Company in the 'We Don't Patronize' list of the American Federation of Labor, but also enjoined the right of free press and free speech, forbidding any reference whatever to the Buck's Stove and Range Company, either oral or printed, and prohibiting the publication and mailing of the American Federationist or any other printed or written matter containing any reference to the Buck's Stove and Range controversy. The discussion of the injunction itself and the principle upon which it was based, were prohibited by the very terms of the order.

"It will be remembered that the American Federation of Labor immediately complied with the original injunction issued December 18, 1907, which became operative December 23, 1907, to the extent of removing the Buck's Stove and Range Company from the 'We Don't Patronize' list. Editorially and by speech and circulars and in convention the officers of the American Federation of Labor, however, continued to protest against the deprivation by injunction of the constitutional liberties of free press and free speech.

"President Gompers, Vice-President Mitchell and Secretary Morrison, upon the petition of the Buck's Stove and Range Company, were subsequently required to show cause why they should not be punished for alleged contempt of the court, because they had exercised these rights, and on December 23, 1908, were sentenced by Justice Wright to imprisonment for twelve, nine and six months respectively."

To the foregoing offer Mr. Ralston gave notice that he would move to strike out the part read unless all in reference to the same subject matter was excluded. Mr. Davenport stating that the whole document was laid in.

Mr. Davenport offered in evidence from the January 1908, 385 Federationist, at page 51, under the heading "We Don't Patronize" and sub-head "Stoves," the following:

"Wrought iron range Company, St. Louis, Missouri; United States Heater Company, Detroit, Michigan; Garney Foundry Company, Toronto, Ontario; Home Stove Worker, Indianapolis, Indiana; Buck's Stove & Range Company, St. Louis, Missouri."

and further asked that the balance of the "We Don't Patronize" List be incorporated in the minutes, to all of which Mr. Ralston objected, there being no evidence tending to show any circulation in violation of any injunction, of the American Federationist of January 1908, at any time, the evidence therefore being incompetent and irrelevant.

The complete "We Don't Patronize" list offered by Mr. Davenport, excluding names, read as follows:

"When application is made by an international union to the American Federation of Labor to place any business firm upon the 'We Don't Patronize' list the international is required to make a full statement of its grievance against such company, and also what efforts have been made to adjust the same.

"The American Federation of Labor either through correspondence or by duly authorized representatives seeks an interview with such firms for the purpose of ascertaining the company's version in the matter in controversy.

"After having exhausted in this way every effort to amicably adjust the matter, the application, together with a full history of the entire matter, is submitted to the Executive Council of the American Federation of Labor for such action as it may deem advisable. If approved, the firm's name appears on the "We Don't Patronize" list in the following issue of the American Federationist.

"An international union is not allowed to have published the names of more than three firms at any one time.

"Similar cause is followed when application is made by local union: directly affiliated with the American Federation of Labor. Directly affiliated local unions are allowed the publication of but one firm at one time.

"Union working men and working women and sympathizers with labor have refused to purchase articles produced by the following firms—Labor papers please note changes from month to month and copy:"

Mr. Davenport offered in evidence from the January, 1908, Federationist, page 38, second column, the following:

"A limited number of the American Federationist for 1907, bound in two volumes, may be had on application to this office. The 1907 volumes are bound in the same style as the preceding years.

"The official printed proceedings of the Norfolk Convention of the A. F. of L. are now ready and can be had upon application by mail, 25 cents per single copy, \$20 per hundred. Postage prepaid by the A. F. of L."

To the foregoing Mr. Ralston objected as incompetent and irrelevant, and not tending to support any of the allegations of the petition for contempt, to which Mr. Davenport replied that they directly supported an allegation in the petition, that there was a specific allegation of this kind.

Mr. Davenport offered in evidence from the February, 1908, Federationist, page 112, the following:

An Urgent Appeal for Financial Aid in Defense of Free Press and Free Speech.

To all organized labor, Greeting:

Justice Gould, of the Supreme Court of the District of Columbia, has issued an injunction against the American Federation of Labor and its officers, officially and individually.

The injunction invades the liberty of the press, the liberty of speech. It enjoins the American Federation of Labor, or its officers from printing, writing, or orally communicating the fact that the Buck's Stove and Range Company has assumed an attitude of hostility toward labor, and that organized labor has made this fact known, and asks its friends to use their influence and purchasing power with a view of bringing about an adjustment of all matters in controversy between that Company and organized labor. The
387 injunction is of the most sweeping character, and it, as well as the suit in connection therewith must, of necessity, be contested in the courts, though it reach the highest judicial tribunal of our country.

With this is a reprint of an editorial from the February, 1908, American Federationist, entitled "Free Speech, Free Press Invaded by Injunction Against A. F. of L.—A Review and Protest." The editorial contains a full presentation of labor's position in regard to this injunction.

The Executive Council of the American Federation of Labor has retained the services of Hon. Alton B. Parker, former Chief Justice of the Court of Appeals of the State of New York and Messrs. Ralston and Siddons as counsel to defend the rights of labor and the more general rights of all our people involved in this injunction and suit; the right, as we have said, of the freedom of press and the freedom of speech.

The Norfolk Convention of the American Federation of Labor authorized the levying of an assessment of one cent per member of affiliated organizations for this case and gave the Executive Council power to levy additional assessments, if necessary. One of these assessments has been levied, but it is found to be insufficient to meet the exigencies and needs of the case.

We believe that organized labor, its membership and its friends, would prefer to make voluntary contributions of financial aid rather than additional assessments be levied.

Because of the necessity to defend the fundamental rights of free speech and free press of the working people to-day, and which may involve the freedom of the press and the freedom of speech of all our people in the future, we appeal to all unions and union members, and the friends of justice to contribute as promptly and as generously as they can, in order that a legal defense fund may be at the disposal of the American Federation of Labor to defend the rights of labor, and the rights of our people before the courts.

Send all contributions direct to Frank Morrison, 423-425 G Street Northwest, Washington, D. C., who will send receipt for same.

Fraternally yours,

SAM'L GOMPERS, *President,*

[Seal American Federation of Labor, Orgd. Nov. 15th, 1881.]

Attest:

FRANK MORRISON, *Secretary,*
JAMES DUNCAN,

First Vice-President,

JOHN MITCHELL,

Second Vice-President,

JAMES O'CONNELL,

Third Vice-President,

MAX MORRIS,

Fourth Vice-President,

D. A. HAYES,

Fifth Vice-President,

DANIEL J. KEEFE,

Sixth Vice-President,

WM. D. HUBER,

Seventh Vice-President,

JOS. F. VALENTINE,

Eighth Vice-President,

JOHN B. LENNON, *Treasurer,*

Executive Council American Federation of Labor.

388 To the foregoing offer Mr. Ralston objected as not tending to show any intent on the part of any of the defendants to place themselves in contempt of the orders of this court, being, as it purports to be, an urgent appeal for financial aid in defense of free press and free speech, and not evidencing any attempt to continue a boycott in defiance of the orders of this court, and further because the signatures of those whose names purport to be attached have not been proven; and is therefore objected to as incompetent and irrelevant.

Mr. Davenport offered in evidence from the February 1908 Federationist, page 98, the following:

Editorial.

By Samuel Gompers.

Free Press and Free Speech Invaded by Injunction Against the A. F. of L.—A Review and Protest.

Justice Gould, of the Supreme Court of the District of Columbia, issued an injunction, on December 18, 1907, against the American Federation of Labor and its officers, and all persons within the jurisdiction of the court.

This injunction enjoins them as officials, or as individuals, from any reference whatsoever to the Buck's Stove and Range Co.'s re-

lations to organized labor, to the fact that the said company is regarded as unfair; that it is on an "unfair" list, or on the "We Don't Patronize" list of the American Federation of Labor. The injunction orders that the facts in controversy between the Buck's Stove and Range Co. and organized labor must not be referred to, either by printed or written word or orally. The American Federation of Labor and its officers are each and severally named in the injunction. This injunction is the most sweeping ever issued.

It is an invasion of the liberty of the press and the right of free speech.

On account of its invasion of these two fundamental liberties, this injunction should be seriously considered by every citizen of our country.

It is the American Federation of Labor and the American Federationist that are now enjoined. Tomorrow it may be another publication or some other class of equally law-abiding citizens, and the present injunction may then be quoted as a sacred precedent for future encroachments upon the liberties of the people.

With all due respect to the court it is impossible for us to see how we can comply with all the terms of this injunction. We would not be performing our duty to labor and to the public without discussion of this injunction. A great principle is at stake. Our forefathers sacrificed even life in order that these fundamental constitutional rights of free press and free speech might be forever guaranteed to our people. We would be recreant to our duty did we not do all in our power to point out to the people the serious invasion of their liberties which has taken place. That this has been done by judge-made injunction and not by statute law makes the menace all the greater.

There is no law in our country and we feel safe in saying that no law could be passed by the consent of the people which would deny to the humblest citizen the right of free expression through speech or by means of the press, and yet this is now attempted by injunction.

389 There is no disrespect to the judge or the court when we state with solemn conviction that we believe this injunction to be unwarranted.

Suppression of freedom of the press is a most serious thing whether occurring in Russia or in the United States. It is because the present injunction commands this that we feel it our duty to enter an emphatic protest.

It has long been a recognized and an established principle that the publisher should be uncensored in what he publishes, although he may be held personally and criminally liable for what he utters. If what is published is wrong or false it is within the power of the courts to punish by using the ordinary process of law, but not by a judge-made injunction.

The publication of the Buck's Stove and Range Co. on the "We Don't Patronize" list of the American Federation of Labor is the exercise of a plain right. To enjoin its publication is to invade and deny the freedom of the press—a right which is guaranteed under our constitution.

The right to print which has grown up through the centuries of freedom, has its basis in the fundamental guarantees of human liberty. It has been defended and upheld by the ablest minds. It ought not to be forbidden by judicial order.

The matter of attempting to suppress the boycott of the Buck's Stove and Range Co., by injunction, while important, yet pales into insignificance before this invasion and denial of constitutional rights.

We shall consider this question fully, and we urge the most serious and careful thought on the subject by our fellow-workers and fellow-citizens.

For years we have pointed out the fact, and we believe the greater part of the intelligent public are in entire accord with us, that the injunction process was originally intended to apply to property rights only, and never was intended to interfere with personal rights—personal liberty. In fact it never is applied to the personal rights and liberties of citizens other than if these citizens are wage-workers.

We discuss this injunction and feel obliged as a matter of conscience and principle to protest against its issuance and its enforcement, yet we desire it to be clearly understood that the editor of the American Federationist does not consider himself thereby violating any law of either state or nation, nor does he intend or advise any disrespect toward the courts of our country. And yet inherent, natural, and constitutional rights and guarantees must be defended and maintained.

The men composing the organizations federated in the American Federation of Labor are as law abiding, as honorable and as upright as can be found in any walk of life.

We feel it our solemn duty to defend our unions and the men connected with our movement from any insinuation that they are lawless or that they are associated together for any unlawful purpose.

Though the wage-workers or their chosen representatives may be the pioneers in this protest, though they may be misunderstood, ay, even persecuted for conscience sake; yet will their labors bear fruit and coming generations of our people will thank those who, at this time, had the clarity of vision to see the right and the courage to strive manfully for the protection of our liberties against aggression.

This injunction against the American Federation of Labor contains many points with which we have hitherto been obliged to deal at long range.

We had hoped that the application for this injunction would be denied on the ground that there was no real basis of complaint in the plaintiff's allegations against the American Federation of Labor. The American Federation of Labor was represented by able attorneys and their arguments showed clearly that there was nothing unlawful in the fact that large numbers of wage-workers simultaneously declined to purchase the Buck's Stove and Ranges.

The plaintiff for the Buck's Stove and Range Co., also its president, is no other than Mr. Van Cleave, also president of the National

Association of Manufacturers. The recent contemptible attacks of the manufacturers' association's hirelings upon the character of the men of labor are still fresh in the public mind. The application for an injunction against the publication as "unfair" of the Buck's Stove and Range Co. by the American Federation of Labor, savored very much of an attempt to use the courts in the prosecution of the manufacturers' association's avowed union-crushing campaign.

We do not for an instant insinuate or affirm that Justice Gould knowingly lent himself to the machinations of the manufacturers' association, but we feel convinced that he was not at all familiar with the unscrupulous means which the manufacturers' association adopts in order to accomplish its purposes, or he might have hesitated to accept in good faith the allegations of the Buck's Stove and Range Co. in regard to its treatment by the American Federation of Labor.

It is quite true that certain union employes to whom the Buck's Stove and Range Co. declined to concede the prevailing hours of labor, made this fact known to their fellow-workers through the columns of the American Federationist and through many other publications in various parts of the country, and the American Federation of Labor endorsed their position and published the same.

The entire procedure was truthful, fair, and honorable. We had a right to inform the public as to the facts in the case. Wage-workers and, indeed, many others prefer to give their patronage to firms which employ union labor and whose product, for that reason, is likely to be of a more satisfactory quality to the consumer.

If the champions of the non-union shop are so proud of their stand in the matter and so convinced of their own fairness and wisdom we really fail to see why they should object to the publication of that fact.

If, as they claim, the public is with them and disapproves of unions and their method of "collective bargaining," we should think that the publication of the fact of a firm declining to pay union wages or concede union hours would be its best possible advertisement and one that would be eagerly sought. Not so it seems. The Buck's Stove and Range Co. judging from the terms of the injunction desires to stifle the voice of labor and enforce a continuous and unbroken silence on the subject of its bad standing with union workmen.

In the application for the injunction it was alleged by the Buck's Stove and Range Co. that its business had suffered seriously from the refusal of union workmen and their friends to purchase its stoves and ranges. But would not absolute silence on our part as to its hostile attitude toward certain union employes be dishonest? Why should we encourage our members and friends to buy the Buck's Stoves and Ranges under the apprehension that this company deals fairly with union labor? Could not union employers then accuse us of unfair discrimination, of trickery and humbug?

If Mr. Van Cleave's opposition to the union shop is a matter of honest and conscientious conviction we should think he would writhe in pain under an injunction which prevents the publication of that fact.

The injunction is printed in full in this issue of the *American Federationist*. We hope our readers will study carefully every word and every phrase. It is a most remarkable injunction.

Justice Gould seems to base this injunction on the assumption that there has been a combination of numbers of wage-earners "conspiring" to commit unlawful acts. Such is not the fact. The public should understand clearly the difference between combinations for unlawful purposes and the voluntary associations of wage-earners for entirely lawful and proper purposes.

Let us for a moment consider what are some of the aims and purposes of our labor movement; to render means and opportunity of employment less precarious; to improve the standard of life; to uproot ignorance and foster education; to establish a normal work-day; instill character, manhood, and an independent spirit among our people; to establish the recognition of the interdependence of man upon man, and that no man can be sufficient unto himself; that he must not shirk a duty to his fellows; to take children from the factory and the workshop, the mill, the mine, and to give them the opportunity of the school, the home and the playground. In a word, to lighten toil, brighten man, to cheer the home and the fire-side, to contribute our effort to make life the better worth living. To achieve these ends, all honorable and lawful means are not only justifiable, but commendable, and should receive the sympathetic support of every right-thinking American, rather than bitter, relentless antagonism.

But to return to the consideration of the injunction, Justice Gould quotes Judge (now Secretary of War) Taft's definition of a boycott as follows:

A boycott is a combination of many to cause a loss to one person by coercing others, against their will, to withdraw from him their beneficial business intercourse through threats that unless these others do so, that many will cause serious loss to them.

Justice Gould adopted this definition in preference to that found in the *Cyclopaedia of Pleadings and Practice* and seemed to feel that Judge Taft furnished an illustrious precedent for the granting of this injunction.

392 True, Secretary Taft has an injunction history (see *American Federationist* editorial, October and November, 1907), but since he has become a candidate for President he does not seem proud of that record. He has recently tried to "explain" and not very successfully, because he, like many other injunction judges did not think it necessary, before granting sweeping injunctions, to acquire a knowledge of modern economics and the proper application of judicial principles thereto. Is Judge Taft the highest authority on what constitutes a boycott or grounds for an injunction of this character?

The very injunction proceedings from which Justice Gould quoted Judge Taft, and other precedents he mentions, were cases in which the injunction privilege was abused by being wrongfully applied. Two wrongs do not make a right in an injunction any more than other affairs of life.

Secretary Taft says a boycott is a combination of many to cause

a loss to one person by coercing others against their will to withdraw from him their beneficial business intercourse by threats.

We defy any one to prove a single instance in this case where men or organizations combined to "coerce" others against their will to withdraw patronage from the Buck's Stove and Range Co. Neither coercion threats, nor conspiracy, in the unlawful sense have been resorted to, yet the whole injunction is based upon this wrong assumption.

Our unions and the men of labor are doing a public service in informing fellow-workers and friends of the fact that certain employers refuse to recognize the associated effort of the workers. This very class of employers organize themselves into combinations and vigorously use the secret black-list to hound good citizens and union men from employment. They use every weapon, lawful and unlawful, to crush unions. No wonder they are ashamed to have their tactics made public.

The members of organized labor are not themselves obliged to refrain from dealing with the firms on the "We Don't Patronize" list of the American Federation of Labor. The information is given them. There is no compulsion. They are entirely free to use their own judgment.

It must be remembered, however, that for the one firm which declines to employ union labor there are probably a score in the same business which prefer it on account of its greater skill and reliability, and for many other sound, economic reasons. Such firms are conceded to turn out a higher quality of product than non-union concerns. The members of organized labor naturally desire to expend their earnings to the best advantage when purchasing and wish to be informed as to what firms do and do not employ union labor. In purchasing, it is often a question of the quality of the goods offered. The "boycott" is a letting alone of undesirable goods.

No person can be compelled to buy an article. If the purchaser chooses to let alone certain products for any reason or for no reason there is no way of compelling him to buy.

This injunction can not compel union men or their friends
393 to buy the Buck's Stoves and Ranges. For this reason the injunction will fail to bolster up the business of this firm which it claims is so swiftly declining.

Individuals as members of organized labor will still exercise the right to buy or not to buy the Buck's Stoves and Ranges. It is an exemplification of the saying that: "You can lead a horse to water but you can't make him drink," and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not purchase the Buck's Stoves and Ranges.

It may not be amiss here to say that in all these proceedings, whether before the court or in the contest forced upon labor by the Buck's Stove and Range Co., no element of personal malice or ill-will enters. Labor is earnestly desirous of entering into friendly relations with employers, and this is none the less true of its desire to reach an honorable adjustment and agreement with the Buck's

Stove and Range Co. So long, however, as that company continues in its hostile attitude to labor, denying it the right to organize, discriminates against union members, and refuses to accord conditions of employment generally regarded as fair in the trade, it must expect retaliatory measures; these measures always, however, within the law and for the purpose of ultimately reaching an honorable, mutually advantageous agreement.

The publication of the Buck's Stove and Range Co. on the "We Don't Patronize" list of the American Federation of Labor is only an incident in the history of the case. These stoves might have been let as severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing that firm from the list against which we primarily protest, it is this injunction invading the freedom of the press.

Justice Gould, in one portion of his opinion, says:

"Defendants [the American Federation of Labor] has the right either individually or collectively to sell their labor to whom they please, on such terms as they please, and to ***decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves.**"

Here he states precisely the whole case of the American Federation of Labor. This is what we have done. This is the sum total of labor's offending. The publication of the Buck's Stove and Range Co. and other firms on the "We Don't Patronize" list is merely giving truthful information at the request of our members as to whether or not certain firms employ union men and concede the other conditions of employment usually granted by those concerns which recognize union labor.

It would seem that having made the above-quoted statement, Justice Gould would have found in it the reason for a refusal to issue the injunction. He, however, goes on to assume that there has been some unwarrantable interference with the plaintiff's business, though neither in his opinion nor in the injunction itself does he make it clear how he arrived at the conclusion that the union cause was any other than as indicated in his own language.

We wish to point out that there exists no law under which we could have been haled before any court for the exercise of
394 free speech and freedom of the press in order to explain to our fellow workers and friends the circumstances under which the Buck's Stove and Range Co. manufactures its goods, and its attitude toward labor. Yet, under the terms of this injunction, we are peremptorily cut off from the exercise of these rights.

We have had occasion in the past to call attention to the fact that the danger of the injunction, as used in labor cases and in no other, is that persons are often forbidden the doing of perfectly lawful things—are enjoined from the exercise of their rights as citizens, and then found in contempt and punished if they fail to submit to the course laid down in the injunction mandate.

It is puzzling to be charged with coercion, conspiracy and what not, and enjoined from the exercise of free speech and free use of

*Heavy type and brackets are ours.

the press just as if we had been guilty of those things of which we are entirely innocent.

It is true that there do exist illegal combinations and conspiracies for the purpose of unwarrantable interference with business, or even its destruction, but these are not organized by wage-workers. The criminal conspiracies in restraint of trade are organized by pirate trusts, by rascally promoters, by unscrupulous manipulators of finance.

The air is filled with the lamentations of the innocent victims of such conspiracies, but do we ever hear of these pirates in the business world being enjoined from continuing their depredations or threatened with contempt proceedings if they do not desist from their unlawful practices which even involve property rights. Never! These injunctions are applied to wage-workers exclusively though they involve personal rights and liberties. **It is this denial of equality before the law against which we protest.**

In making these statements we are not indulging in unjustifiable or disrespectful criticism of the judge who issued this injunction. We assume that he acted in accordance with the dictates of his conscience and his best judgment.

One point we have been making for years in regard to other injunctions is equally applicable to this case. We contend that the power to issue injunctions involving personal rights and liberties should not be left to the discretion of any judge no matter how wise, how discreet, or how learned.

President Roosevelt in his recent message to Congress made the following comment on the abuse of the injunction power:

"Instances of abuses in the granting of injunctions in labor disputes continue to occur, and the resentment in the minds of those who feel that their rights are being invaded and their liberty of action and of speech unwarrantably restrained continues likewise to grow. Much of the attack on the use of the process of injunction is wholly without warrant; but I am constrained to express the belief that for some of it there is warrant. This question is becoming more and more one of prime importance, and unless the courts will themselves deal with it in effective manner, it is certain ultimately to demand some form of legislative action. It would be

most unfortunate for our social welfare, if we should permit many honest and law-abiding citizens to feel that they had just cause for regarding our courts with hostility. I earnestly commend to the attention of the Congress this matter, so that some way may be devised which will limit the abuse of injunctions and protect those rights which from time to time it unwarrantably invades. Moreover, discontent is often expressed with the use of the process of injunction by the courts, not only in labor disputes, but where state laws are concerned."

We earnestly hope that public opinion on this subject will be so compelling, so wide-spread, and so intense that Congress will at an early date crystallize into statute law the expression of this feeling by enacting the American Federation of Labor bill "to limit and regulate injunctions" which is designed to restrain the improper use

of the injunction power and to protect rights which have been unwarrantably invaded.

It is our earnest hope that our protest of today in behalf of justice and right may find expression in the laws of tomorrow.

We have already stated that the case of the Buck's Stove and Range Co. against the American Federation of Labor and its officers is represented by able counsel. Additional counsel, foremost at the bar of our country has been added. Regardless of any phase which the case may assume, it will be continued by the American Federation of Labor until a final decision has been rendered by the Supreme Court of the United States.

We repeat here what we have elsewhere said, that when the true historian shall present to the world the great struggles of the past and of the present; when the tinsel and false coloring shall have been removed from the real figures and events, there will be revealed to mankind's astonished gaze the continuous struggle of labor against tyranny, brutality, and injustice; the struggle for the right, for humanity, for progress, and for civilization. The trade unions and the Federation of our time are in their very essence, the continuity of the historically developed progress of labor through the ages. We can not stop; we must go on.

396 To the foregoing offer Mr. Ralston objected as incompetent and irrelevant, not tending to prove any violation of any injunction order of the court, but is merely such temperate criticism of the action of the court as any person has the entire right to make; and that, in so far as it is a criticism of the action of the court it is a criticism of such parts of the alleged order of the court as were themselves objectionable in the eyes of the Court of Appeals of this District. Furthermore that the evidence offered does not tend to show the continuance of any boycott in violation of or any contempt of the orders of the court.

Mr. Davenport (page 520) next offered in evidence from the March 1908 American Federationist, page 192:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

This offer being made against Mr. Gompers, to which Mr. Ralston objected as not tending to show a contempt of the court order.

Mr. Davenport offered in evidence from the April 1908 Federationist, page 279, the following:

"The temporary injunction issued by Justice Gould of the Court of Equity of the District of Columbia, in the (Van Cleave) Buck's Stove and Range Company of St. Louis against the American Federation of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia."

And also the following:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor

to buy a Buck's Stove or range. No, not even to buy a
397 Loewe hat."

To the foregoing offers Mr. Ralston objected for the reasons stated with regard to the last evidence offered, and further objected as being contained in the April 1908 Federationist, and not appearing but that the same was issued after the expiration of the order of December 23, 1907, and therefore not shown to be competent.

Mr. Davenport (page 521) offered in evidence from pages 295 and 296 of the April 1908 Federationist, under the heading "Official," and under the title "Official Circular," the following:

398

WASHINGTON, D. C., *March 20, 1908.*

To State Branches and Central Bodies.

DEAR SIR AND BROTHER: Among other matters which received the consideration of the Norfolk convention of the American Federation of Labor was the subject affecting the child labor laws in the various states of the union. This matter was discussed at considerable length and resulted in the adoption of a resolution as follows:

"Whereas, We believe the time is expedient when some definite action should be taken by the American Federation of Labor for the abolition of child labor in the several states, therefore be it

"Resolved, That we urge upon the legislative committee of the various state organizations the necessity of making an aggressive agitation in their respective state legislatures for the enactment of laws abolishing child labor where such a law does not now exist."

To the organized labor movement of the country is due the credit of the first agitation in the first work for the enactment of laws restricting the employment of women and children.

I trust you will take this matter up at the earliest possible moment with the other officers of your state federation of labor, to the end that this subject-matter may receive the earliest attention possible, and thereby carry out the letter and spirit of the humane action of the Norfolk convention.

The Norfolk convention further adopted the following:

"We therefore recommend that the matter of co-operation with the American Society of Equity, in the establishment of Equity Exchanges, be referred to the various state and city central bodies for investigation and action."

This matter also should receive the very careful and prompt action of your organization.

The convention also recommended that the various state branches throughout the country should continue their co-operation and assistance in the departmental investigation of hours of labor—that is, to use every possible effort to have the state legislatures enact laws requiring manufacturers to give to the Department of Commerce and Labor and to the labor departments of their respective states all data pertaining to the hours of labor, wages, and other working conditions, which these departments may deem necessary in the ex-

execution of their duties, experience having shown that the present laws in this direction are not sufficiently stringent.

It was decided by the Norfolk convention that the union label bulletins, now at the headquarters of the American Federation of Labor, should be distributed free to the affiliated central bodies. In conformity therewith, these bulletins will be sent out at an early date.

The Executive Council, to which was referred Resolution No. 23 of the convention, directed that everything within our power be done to assist the Retail Clerks' International Protective Association in its campaign for the betterment of conditions of the female workers employed in the retail stores throughout the country, and the establishment of the \$9 a week minimum wage. It is also earnestly urged that your organization shall render every assistance within your power in this splendid effort.

On May 8, 1907, I wrote to you requesting you to send me copies of the ordinances, and laws of the several states which you could obtain, providing for the protection of the life of workmen in constructing works and buildings, to give, as far as you knew and could, the experiences of the violations of law, the present general conditions of your state, or any state of the union.

Quite a number of replies were received from this circular, but those organizations which have not thus replied will please do so at their earliest convenience.

At the Norfolk convention of the American Federation of Labor, the Executive Council submitted a report upon this subject as follows: •

"The last convention directed that we make an investigation relative to evasion and disregard of the laws of the states and city ordinances relative to the protection of human life, of men engaged in constructive work on buildings, and to have prepared a bill in statutory form to cover all states and territories with a view to obtain simultaneous enactment of a law in every state, territory, possession, or dependency of the United States, for the protection of human life and limb; and that a further investigation be made regarding the so-called 'casualty companies,' whether these companies are engaged in such operations 'which tend to defeat the ends of justice and proper protection of human life.'

"In conformity with your instructions we have endeavored to collect from every available source information relative to these matters. We have secured considerable interesting and valuable data, but it is incomplete. The Executive Council should continue making further investigation so as to be in a position whereby your instructions and purposes may be carried into effect."

The convention directed that the Executive Council should complete the compilation of this data, and I am therefore again writing you to request that you forward the above information at your earliest convenience.

Existing conditions demand that every effort be put forth by our fellow-unionists to more thoroughly organize the yet unorganized workers; that they may be benefited by the beneficent influence of

associated effort. Now, more than ever, is it necessary for labor to be organized, united and federated, so that the interests of all may be protected and promoted. Let it be clearly understood by all that the toilers are not responsible for existing financial difficulties, and will not be made the victims of the attempt at industrial depression; that wage reductions will be resisted by every lawful means at our command and that the reasonable demands which labor
399 makes for congressional and legislative relief for the redress of wrongs which are practiced, and to attain the rights to which they are entitled will go on uninterrupted with greater persistency than ever before.

Bear in mind that an injunction issued, by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove and Range Company of St. Louis.

Fellow workers, be true and helpful to yourselves and to each other. Remember that united effort in cause of right and just must triumph.

Thanking you in advance for your cordial and prompt co-operation for the common uplift of the toilers and of all our people, and hoping for renewed energy and success for yourselves, I am,

Faternally yours,

SAMUEL GOMPERS,

President American Federation of Labor.

Attest:

FRANK MORRISON, *Secretary.*

400 To the foregoing Mr. Ralston objected for the reasons stated, it not appearing when this publication was made, and it not appearing to have been made or circulated during the existence of the order of December 23, 1907.

Mr. Davenport offered in evidence from the May 1908 *Federationist*, top of page 383, being the concluding portion of what is purported to be a statement by respondent Gompers, as follows:

"I want to assure you on my word of honor that so long as I live I will never buy a Loewe hat or a Buck's stove or range until those gentlemen come into agreement with organized labor and grant us conditions of fairness. Then they will get support and help. Until then you may call it by any other name:—boycott or no boycott—but I won't buy your hats, anyhow."

This offer was objected to by Mr. Ralston as being incomplete in itself, as not pertinent under the charges made, and it appearing in a publication made long after the expiration of the order said to have been violated, and therefore irrelevant.

Mr. Davenport offered in evidence from page 467 of the June 1908 *Federationist*, under the heading "Talks on Labor," as follows:

"An address delivered at Chicago on May 1, by Samuel Gompers, on Labor Legislation demanded from Congress and recent Supreme Court decisions as affecting organized labor.

"I might say just parenthetically about the Hatters' case that you are not now permitted to boycott the Loewe hats, but I want to call your attention to the fact that there is no law compelling you to

wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. That applies equally to Mr. Van Cleave's stoves and ranges. And, by the way, I don't know why you should buy any of that sort of stuff. I won't; but that is a matter to which we can refer more particularly in our organizations."

Mr. Ralston objected, proper proof of the speech of which it appears to be a part not having been made, the offer being of but a part and not of the whole of the speech, and the speech and publication itself appearing to have taken place long after the expiration of the order alleged to have been violated.

Mr. Davenport offered from the July 1908 Federationist, page 531, under the general heading of "Editorial; by Samuel Gompers," the following:

"The Supreme Court of the District of Columbia has made permanent the injunction issued by Justice Gould, enjoining the American Federation of Labor, its officers, its affiliated unions, and their members and friends, from declaring that the Van Cleave Buck's Stove & Range Company of St. Louis is on the unfair list of the American Federation of Labor, or the publication of that statement in the American Federationist. An appeal will be taken to the Court of Appeals of the District of Columbia, and, if necessary, to the United States Supreme Court. The injunction does not compel anyone to buy the Van Cleave Buck's stoves and ranges, nor has any decree been issued compelling anyone to buy Loewe's hats."

To this offer Mr. Ralston objected as not tending to prove the charges of contempt made herein, and as referring to events long after the expiration of the order claimed to have been violated, and not of itself being a violation even of that order.

Mr. Davenport offered in evidence from the September 1908 Federationist, first column, page 720, the following:

"I notice that President Gompers, Secretary Morrison and Vice President John Mitchell have been haled to court, charged with violating the celebrated injunction order — Judge Gould. Money makes the mare go, and Mr. Van Cleave's money is making this contempt case go, but we have had Van Cleaves before, and will have them in the future, and labor will rise in its might and crush Mr. Van Cleave and all his money that may work now or in the future for the purpose of restricting labor in its fundamental rights of free speech and free press."

Mr. Ralston objected because it is not charged in any way whatever in the report of the committee brought against Mr. Gompers; and furthermore that it is incompetent and irrelevant as occurring long after the date of the expiration of the order, violation of which is complained of, and not purporting to be written by any of the respondents.

Mr. Davenport offered in evidence from page 725 of the Federationist of September 1908, from the editorial by Samuel Gompers, the following:

"We have also witnessed in the past year most serious judicial

2
7
9

invasion and usurpation of individual liberty and human freedom by the abuse of the writ of injunction. An attempt has been made by the abuse of the writ of injunction to deny and prohibit the freedom of speech and the freedom of the press, and men have been cited to show cause why they should not be punished purely for the exercise of the right of free press and free speech, rights not only natural and inherent in themselves, but guaranteed by the Constitution of our country, and which our fore-fathers fought to establish, and which a free people never dreamed would be placed in jeopardy."

To the foregoing Mr. Ralston objected as not connected with the charges, but relating to a distinct matter unrelated to the offense endeavored to be charged against the respondents, and occurring many months after the expiration of the order alleged to have been violated, and therefore incompetent.

Mr. Davenport offered in evidence the petition of the 403 Buck's Stove and Range Company from the American Federationist for September 1908, page 674, as follows:

Petition of Buck's Stove and Range Co. to the Supreme Court of the District of Columbia for an Order against Samuel Gompers, Frank Morrison, and John Mitchell, "To Show Cause" Why They Should Not be Punished for Contempt of the Court's Injunction of December 18, 1907.

BUCK'S STOVE AND RANGE CO., Plaintiff,

VS.

AMERICAN FEDERATION OF LABOR et al., Defendants.

The Van Cleave Buck's Stove and Range Company recently submitted to the Supreme Court of the District of Columbia a voluminous petition setting forth its arguments why an order "to show cause" was asked against Samuel Gompers, Frank Morrison, and John Mitchell. The exact text of the order of the court granted July 20, 1908, was published in the August American Federationist.

In this petition the full text of the temporary and the permanent injunction secured by the Buck's Stove and Range Company against the American Federation of Labor et al. is quoted and reference made to the various stages of court procedure leading up to the granting of the permanent injunction. (Paragraphs I to V inclusive.)

We have not the space here to reproduce this preliminary matter.

The text of the original injunction order will be found in the February, 1908, issue of the American Federationist.

The petition after calling attention to the injunction proceedings and findings continues:

V. Reference is hereby made to the original bill and exhibits filed in support of the same, the answer and amended answer of the defendants, the testimony taken on both sides, the original order restraining and enjoining the defendants pendente lite and the

final decree in the cause and each and every other paper and proceeding in this cause from the institution of the suit to the filing of this petition, and it is prayed that the same may be taken and read as a part hereof at any and all hearings upon this petition, whether in this court or upon appeal from its decision herein rendered.

VI. Notwithstanding the said order restraining and enjoining the defendants, the said Samuel Gompers, Frank Morrison and John Mitchell included, passed by the court on the 18th day of December, A. D. 1907, and notwithstanding the final decree in the cause, passed on the 23d day of March, A. D. 1908, perpetually restraining and enjoining the defendants, the said Samuel Gompers, Frank Morrison and John Mitchell included, all as above set out, the said Samuel Gompers, Frank Morrison and John Mitchell have, since the filing of the said bill and the passage and entry of the said order, as well as of the final decree, frequently, regularly and systematically, willfully and with premeditation, violated the said order and the said final decree alike, and have totally disregarded the same; and, in so doing, they have acted in gross and willful contempt of the authority of the court and its order and action in the premises, as hereinafter set out; the said Samuel Gompers having, some ten years ago, suggested the course of conduct which has been pursued in this case by him and by the said Frank Morrison and John Mitchell, and all of them having since repeated that suggestion.

VII. Heretofore, to-wit: the 13th day of December, A. D. 1897, at the convention of the defendant, American Federation of Labor, held at Nashville, Tennessee, the said Samuel Gompers, being then, as now, the President of the said defendant, American Federation of Labor, in reporting, as its President, to the convention of the said defendant, used the following language, to be found at pages 23 and 24 of the official report of the proceedings of the American Federation of Labor for the year 1897, which were prepared, authenticated and circulated by the said Frank Morrison, he being then, as now, Secretary of the defendant, American Federation of Labor, and which were published by order of the said convention, and, by like order, republished by the said Frank Morrison in or about the year 1905:

"Boycotts and Court Decisions.

"Recently one of the branches of the Federal Courts decided by a majority vote that the boycott is illegal. Whether the decision rendered is applicable to all cases or simply to the one immediately under consideration has not yet fully transpired. It is manifest that the workers should have the same rights which other citizens enjoy, the right which neither constitutions grant nor courts can deny—the right to stand by our friends, patronize our sympathizers and co-operators, and to withhold our patronage from those
404 who are antagonistic to us and our cause, and the further right to acquaint our people with our preferences. While there is no desire here to argue in favor of our rights, we should

demand the change of any law which curbs the privilege and the right of the workers to exercise their normal and natural preferences. In the meantime, we should proceed as we have of old, and wherever a court shall issue an injunction restraining any of our fellow-workers from placing a concern hostile to labor's interest on our unfair list; enjoining the workers from issuing notices of this character, the further suggestion is made that upon any letter or circular issued upon a matter of this character, after stating the name of the unfair firm and the grievance complained of, the words, 'We have been enjoined by the courts from boycotting this concern,' could be added with advantage."

And the conduct and acts of the said Samuel Gompers herein-after set out have been designed and carried out in accordance with the scheme or plan so outlined by him at the convention of the defendant, American Federation of Labor, held at Nashville in December, 1897.

VIII. And, when on the stand as a witness for the defendants in this cause, on January 30, 1908, the attention of the said Samuel Gompers, on cross-examination, was called to the portion of his report to the Nashville, 1897, convention set out in the last paragraph of this petition, and he was thereupon interrogated, and replied in respect to the same, as follows:

"Q. Have you ever recalled that suggestion?

A. No, sir; I would rather reaffirm it.

Q. You would reaffirm it?

A. It is a very long quotation, and my answer requires some little amplification of it, so that I may be fully understood.

"Q. This is the particular part to which I desire to direct your attention (reading):

'In the meantime we should proceed as we have of old, and wherever a court shall issue an injunction restraining any of our fellow-workers from placing a concern hostile to labor's interest on our unfair list; enjoining the workers from issuing notices of this character, the further suggestion is made that upon any letter or circular issued upon a matter of this character, after stating the name of the unfair firm and the grievance complained of, the words "We have been enjoined by the Courts from boycotting this concern" could be added with advantage.'

You have stated that you have never recalled that?

A. No, sir; I have never recalled it, and I think—you can imagine that in a report, the whole subject can not be comprehended.

Q. You can explain it later. You have answered it sufficiently. We want to get along.

A. Just let me make a memorandum, then, so that I will not forget it."

And on re-direct examination, he was asked the following question and made the following answer:

"Q. In asking you about the report of 1897, Mr. Davenport said you made reference to a decision then which enjoined boycotts and which, in your report, you said whether it was general or not, you

could not determine, etc., and then you requested to be permitted at that time to go on and say something further; but you were not allowed to do so. Is there anything now that you care to say about that report?

A. I suggested to the organizations of labor that they make the statement that they had been enjoined, if an injunction had been issued, by a court—a simple statement of fact.”

IX. Thereafter, in the November, 1902, number of the American Federationist, of which the said Samuel Gompers was then, as he now is, its duly authorized editor, in the editorial column thereof, under the name of the said Samuel Gompers, at page 808, he printed and published the following:

“We beg to say plainly and distinctly to Mr. Merritt and fellow sympathizers that the American Federation of Labor will never abandon the boycott, and that the threats against the Federation are idle, impotent and impudent.”

The said American Federationist, as set out in paragraph IV of the original bill in this cause, is the official organ of the said defendant, American Federation of Labor, and has a wide circulation, not only among the members of the said Federation, but among the public generally.

X. The original bill in this cause having been filed on to-wit: the 19th day of August, A. D. 1907, and the process of subpoena having been served upon the said Samuel Gompers, as a defendant named in the bill, on to-wit: the 20th day of August, A. D. 1907, thereafter, to-wit: on the same day, or the day following, the said Samuel Gompers not only stated his intention of not complying with any order which might be passed by the court pursuant to the prayers of the said bill, but publicly stated such intention in an interview with the representatives of three prominent newspapers, and the said interview was extensively published throughout the country, including the city of Washington, in the District of Columbia. In the course of said interview so published, the said Samuel Gompers said: “When it comes to a choice between surrendering my rights as a free American citizen or violating the injunction of the courts, I do not hesitate to say that I shall exercise my rights, as between the two.” This statement of the said Samuel Gompers, at or about the time of the filing of the bill in this cause, was made in accordance with, and pursuant to, the suggestion and purpose outlined by him at the Nashville convention above mentioned, ten years earlier.

XI. Thereafter, to-wit: on the 5th day of September, A. D. 1907, the said Samuel Gompers, at the Jamestown Exposition, in the course of his Labor Day speech, delivered as a public address, said:

“An injunction is now being sought from the Supreme Court of the District of Columbia against myself and my colleagues of the executive council of the American Federation of Labor. It seeks to enjoin us from doing perfectly lawful acts; to deprive us of our lawful and constitutional rights. So far as I am concerned, let me say that never have I, nor ever will I, violate a law. I desire it to be clearly understood that when any court undertakes without warrant of law by the injunction process to

deprive me of my personal rights and my personal liberty guaranteed by the Constitution, I shall have no hesitancy in asserting and exercising those rights."

This language of the said Samuel Gompers was published broadly and generally in the daily press throughout the country, as he knew it would be. Not only so, but in the October, 1907, number of the American Federationist he published the same at length in the editorial column of the said publication, under his own name, at page 789 thereof. And the said Samuel Gompers has, on numerous occasions since then, repeated and reaffirmed his said threats to violate any injunctive process of the court in this case, which should be issued, and which has been issued, and is now in force, against him, and has carried out his said threats by persistently violating the said injunctive process.

XII. In the same October, 1907, number of the American Federationist, at page 785, in the editorial column thereof, under his own name, after reciting on the preceding page the filing of the original bill in this cause and the institution of the present suit, the said Samuel Gompers used the following language, referring directly and specifically to this cause:

"So long as the right of free speech and free press obtains, we shall publish the truth in regard to all matters. If any person or association challenges the accuracy of any of our statements, we are willing to meet him or them in the courts and defend ourselves. So long as we do not print anything which is libelous or seditious, we propose to maintain our rights and exercise liberty of speech and liberty of the press. If for any reason, at any time, the name of the Buck's Stove and Range Company does not appear upon the 'We Don't Patronize' list of the American Federationist (unless that company becomes fair in its dealings toward Labor), all will understand that the right of free speech and free press are denied us; but even this will not deprive us, or our fellow-workmen and those who sympathize with our cause, from exercising their lawful right and privilege of withholding their patronage from the Van Cleave Company—the Buck's Stove and Range Company of St. Louis.

"So far as we are personally and officially concerned, we have fully stated our position in the American Federationist and elsewhere.

"Do not fail to keep the Buck's Stove and Range Company of St. Louis in mind and remember that it is on the unfair list of organized labor of America."

XIII. And in the same October, 1907, number of the American Federationist, at pages 791 and 792 thereof, in the column headed "Editorial Notes," the said Samuel Gompers, referring to this cause, used the following language:

"So labor must not use its patronage as it will—that is, if Van Cleave of Buck's Stove and Range Company fame has his way. But what vested right has that company in the patronage of labor or of labor's friends? It is their own to withhold or bestow as their interest or fancy may direct.

"They have a lawful right to do as they wish, all the Van Cleave's,

all the injunctions, all the fool or vicious opponents to the contrary notwithstanding.

"Wonder whether Van Cleave will try for an injunction compelling union men and their friends to buy the Buck's Stove and Range Company's unfair product?"

"Until a law is passed making it compulsory upon labor men to buy Van Cleave's stoves we need not buy them, we won't buy them and we will persuade other fair-minded, sympathetic friends to co-operate with us and leave the blamed things alone.

"Go to — with your injunctions."

And, under the same heading, he published the following additional statement:

"The Buck's Stove and Range Company of St. Louis (of which Mr. Van Cleave is president) will continue to be regarded and treated as unfair until it comes to an honorable agreement with organized labor. And this, too, whether or not it appears on the 'We Don't Patronize' list."

Pursuant to said declarations and threats of the said Samuel Gompers, the name of petitioner has been retained and published in the "Unfair" list in the journal of the International Metal Polishers Union, described in the original bill in this cause, to-wit: in its issues of November and December, 1907, and January, February, March, April, May, June and July, 1908, as will be seen by reference to the said issues, herewith filed as Exhibit Petitioner No. 4.

XIV. Thereafter, on to-wit: the 14th day of November, A. D. 1907, the application for an injunction pendente lite came on for hearing before the court, and the hearing of the same occupied several days, at the conclusion of which the cause was taken under consideration by the presiding justice. After the cause had been submitted to the court, and before the decision in the premises has been rendered, the said Samuel Gompers and Frank Morrison, in anticipation of the granting of said application, and for the purpose of nullifying and defeating the effect of any injunction which should be issued in the premises, prepared, published and distributed a circular letter, signed by the said Samuel Gompers and Frank Morrison, copies of which were by them transmitted and caused to be transmitted to the various unions affiliated with the American Federation of Labor in the several States and Territories of the United States and Canada, on or about its date, November 26, 1907, to the number of twenty-seven thousand, as will be seen by reference to the stipulation of counsel for the respective parties, filed in this cause on to-wit: the 8th day of April, A. D. 1908. The said circular letter is, in part, as follows:

"Mr. Van Cleave, for the Buck's Stove & Range Company, brought suit against the American Federation of Labor and its Executive Council and has petitioned the court for an injunction to prohibit the American Federation of Labor from in any way advising Organized Labor and its friends of the fact that The Buck's Stove & Range Company is unfair to its employees and for
406 that reason its name is published upon the American Federation of Labor, 'We Don't Patronize' list."

"The Court will soon give a decision on the legal issue which has been raised. We shall continue to maintain that we have the right to publish the name of the Buck's Stove & Range Company upon the 'We Don't Patronize List.' Should we be enjoined by the Court from doing so, the merits of the case will not be altered nor can any court decision take from any man the right to bestow his patronage where he pleases."

The said letter, so prepared, issued and caused to be circulated by the said Samuel Gompers and Frank Morrison, further stated:

"Bear in mind that you have a right to decide how your money shall be expended.

"You may or may not buy the products of The Buck's Stove & Range Company.

"There is no law or edict of court that can compel you to buy a Buck's Stove or Range.

"You can not be prohibited from informing your friends and sympathizers of the reason why you exercise this right. You have also the right to inform business men handling The Buck's Stove & Range Company's products of its unfair attitude towards its employees and ask them to give their sympathy and aid in influencing the Buck's Stove & Range Company to deal fairly with its employees and come to an honorable agreement with the Union primarily at interest.

"It would be well for you as central bodies, local unions and individual members of organized labor and sympathizers to call on business men in your respective localities, urge their sympathetic co-operation and ask them to write to The Buck's Stove & Range Company of St. Louis, urging it to make an honorable adjustment of its relations with organized labor.

"Act energetically and at once. Report the result of your effort to the undersigned.

SAM'L GOMPERS,

"President, American Federation of Labor."

"FRANK MORRISON,

Secretary."

XV. And thereafter, to-wit: the 17th day of December, A. D. 1907, the court filed its opinion in the cause, to the effect that the complainant was entitled to the injunction pendente lite as prayed in the original bill, and on to-wit: the 18th day of December, A. D. 1907, passed the order set out in paragraph II of this petition. The said order became operative and effective by the giving of the undertaking required by it on to-wit: the 23rd day of December, A. D. 1907, and has never been revoked or altered. Notwithstanding the passage and entry of this order, and taking effect of the same by the giving of the undertaking, as aforesaid, the said Samuel Gompers and Frank Morrison, having set in motion the instrumentalities devised by them for the obstruction and nullification of the order when entered, have failed to take any action whatever to prevent that result, but, on the contrary, have since taken other steps as will here-

after appear, for the more effectual carrying out of the plan and purpose outlined in said circular letter.

XVI. The order for an injunction pendente lite having been passed on the 18th day of December, A. D. 1907, and the injunction having taken effect and become operative on the 23rd day of December, A. D. 1907, as above stated, the said Samuel Gompers, as will be seen by reference to his deposition in this cause, hastened or "rushed" the publication of the January, 1908, issue of the American Federationist, with a view to circulating the same during the time which should elapse between the passage of the said order for an injunction, and the injunctive order itself. The said January, 1908, number, at page 51, includes and publishes in full the "We Don't Patronize" or "Unfair" list of the American Federation of Labor, containing the name of petitioner; and at page 38 of the said issue, the said Samuel Gompers published the following:

"A limited number of the American Federationist for 1907, bound in two volumes, may be had on application to this office. The 1907 volumes are bound in the same style as the preceding years.

"The official printed proceedings of the Norfolk convention of the A. F. of L. are now ready and can be had upon application by mail, 25 cents per single copy, \$20 per hundred. Postage prepaid by the A. F. of L."

The said proceedings of the Norfolk Convention contain, at page 91, the name of petitioner as being on the "Unfair" list of the American Federation of Labor.

Notwithstanding the fact that the injunction pendente lite had taken effect on the 23rd day of December, A. D. 1907, the said Samuel Gompers and the said Frank Morrison thereafter continued to circulate and distribute the said issue, containing the name of petitioner as aforesaid, and notwithstanding the fact that the permanent injunction has since been entered in this cause, they have, from the said 23rd day of December, A. D. 1907, to the present time, continued, uninterruptedly, to circulate and distribute to the public generally copies of the said January, 1908, number of the American Federationist, of the proceedings of the Norfolk convention above mentioned, and bound copies of the American Federationist for the year 1907, the latter containing, in each of the May, June, July, August, September, October, November and December numbers thereof, the name of petitioner on the "We Don't Patronize" or "Unfair" list of the American Federation of Labor; all in violation and willful disregard and contempt of the injunctive order and decree of the court in this cause.

XVII. Thereafter, to-wit: in the February, 1908, number of the American Federationist, the said Samuel Gompers, in the editorial column thereof, under his own name, published a lengthy article concerning the said order, at pages 98 to 105, inclusive, and the said Samuel Gompers, Frank Morrison and John Mitchell published, at pages 112 and 113 of the said number of the American Federationist, what they denominated an "Urgent Appeal," signed by the defendant Samuel Gompers, as President, the defendant Frank Morrison, as Secretary, and the defendants James Duncan, John Mit-

chell, James O'Connell, Max Morris, D. A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, as Vice-Presidents, and the defendant John B. Lennon, as Treasurer, composing the
407 Executive Council of the American Federation of Labor, in which they made special reference to said editorial article as containing a full presentation of the said defendants' position in regard to said order of injunction. In the course of both the said editorial and the said "Urgent Appeal," it was stated that the order is an invasion of the liberty of the press and the right of free speech, and further stated in said editorial that "With all due respect to the court, it is impossible for us to see how we can comply with all the terms of this injunction," and further stated in said editorial as follows:

"This injunction can not compel union men or their friends to buy the Buck's stoves and ranges. For this reason, the injunction will fail to bolster up the business of this firm, which it claims is so swiftly declining.

"Individuals, as members of organized labor, will still exercise the right to buy or not to buy the Buck's stoves and ranges. It is an exemplification of the saying that 'You can lead a horse to water, but you can't make him drink,' and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not to purchase the Buck's stoves and ranges.

"It may not be amiss here to say that in all these proceedings, whether before the court or in the contest forced upon labor by The Buck's Stove and Range Company, no element of personal malice or ill-will enters. Labor is earnestly desirous of entering into friendly relations with employers, and this is none the less true of its desire to reach an honorable adjustment and agreement with The Buck's Stove and Range Company. So long, however, as that company continues in its hostile attitude to labor, denying it the right to organize, discriminates against union members, and refuses to accord conditions of employment generally regarded as fair in the trade, it must expect retaliatory measures; these measures always, however, within the law and for the purpose of ultimately reaching an honorable, mutually advantageous agreement.

"The publication of the Buck's Stove and Range Co. on the 'We Don't Patronize' list of the American Federation of Labor is only an incident in the history of the case. These stoves might have been left as severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing that firm from the list against which we primarily protest, it is this injunction invading the freedom of the press."

And, at pages 114 and 115 of the said February, 1908, number of the American Federationist, the said Samuel Gompers published the order itself at length, prefacing the same with the following statement:

"In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove and Range Company declares that punishment for violation of the injunction issued by Justice Gould, against the American Federation of Labor, applies particu-

larly to those within the territorial limits of the District of Columbia who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation of Labor assure us that this construction of the court's order is accurate."

Petitioner is advised and believes, and therefore avers, that the said statement prefacing the publication of the order of December 18, 1907, is an incorrect interpretation of the effect of the said order, and was made for the purpose of defeating, and of inducing others to violate, the same; and that the publication of the said order, prefaced as aforesaid, and of the said editorial, constituted a violation of the injunction pendente lite and a contempt of the order of the court. A copy of the said February, 1908, number of the American Federationist is herewith filed, marked Exhibit Petitioner No. 1, and it is prayed that the said editorial, the said "Urgent Appeal," and the references on pages 114 and 115 thereof to the said order, be taken and read as a part of this petition.

XVIII. The said John Mitchell, as set out in paragraph IV of the original bill in this cause, is a vice-president and a member of the Executive Council of the defendant, American Federation of Labor. Until the first day of April, A. D. 1908, and for many years prior thereto, he was also the President of the United Mine Workers of America, one of the subordinate national and international unions of the defendant American Federation of Labor, referred to in paragraph IV of the original bill in this cause, and in Exhibit C thereto attached, and the Chairman of its Executive Board, by which Executive Board is published weekly the United Mine Workers' Journal, the official organ of the said United Mine Workers of America. In the issue of the said United Mine Workers Journal of January 30, 1908, the said John Mitchell caused or permitted to be published the above mentioned editorial, "Urgent Appeal" and statement prefacing the said injunction order as published in the February, 1908, number of the American Federationist, as will be seen by reference to pages 6, 15, and 16 of the said issue of January 30, 1908, a copy of which is herewith filed, marked Exhibit Petitioner No. 2, and prayed to be taken and read as a part of this petition. The said United Mine Workers of America comprises several hundred thousand members, and its official organ is circulated generally among the members of the said association, and the public at large.

On to-wit: the 25th day of January, A. D. 1908, at the Nineteenth Annual Convention of the United Mine Workers of America, held at Indianapolis, Indiana, the defendant, John Mitchell, its President, being in the chair, the following resolution was laid before the convention by the said defendant, John Mitchell, put to a vote and adopted unanimously, and by him so declared:

"Resolution No. 73.

"Whereas, The Buck's Stove and Range Company, of St. Louis, Mo., have taken legal steps to prevent organized labor in general, and the officers and executive committee of the A. F. of L., in particular, from advertising the above named firm as being on the 'unfair' or 'we don't patronize' list, and .

Whereas, By the issue of such an injunction or restraining order as prayed for by the above named firm, organized labor will be deprived of one of its most effective weapons, and

408 "Whereas, J. W. Van Cleave, the president of above named firm, also president of the National Manufacturers' Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"Resolved, That the U. M. W. of A., in Nineteenth Annual Convention assembled, place the Buck's stoves and ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above make be fined \$5.00, and failing to pay same be expelled from the organization."

And, thereafter, to-wit: the 30th day of January, A. D. 1908, the said John Mitchell caused or permitted the official report of the proceedings of the said convention to be published in the above mentioned issue of the said United Mine Workers Journal, including the said resolution and the action taken thereupon, as will be seen by reference to page 7 of Exhibit Petitioner No. 2, above referred to.

And the said John Mitchell also caused or permitted the following to be published on the front page of the issue of the said United Mine Workers Journal on the 9th day of January, A. D. 1908, as will be seen by reference to a copy of said issue herewith filed, marked Exhibit Petitioner No. 3, and prayed to be taken and read as a part of this petition:

Unlawful Boycott.

"Our readers should govern themselves accordingly and allow all to live unmolested.

"Here is something clever and cute from the Galesburg Labor News:

"Whether or not the Manufacturers' Association, who were behind the Buck Stove and Range Company in instigating the suit, will accomplish their desired results is difficult to say. Trades unionists will fail to see wherein they will. For no power on earth can compel a man to buy something he does not want to and an announcement something on this order is enough to indicate to a union man what not to buy:

It is unlawful for the American Federation of Labor to boycott Buck Stoves and Ranges.

"Justice Gould, in the Equity Court of the District of Columbia, on December 17th, handed down a decision granting the company a temporary injunction preventing the Federation from publishing this firm as

Unfair to Organized Labor.

'The above could hardly be construed to conflict with the law, since it is a statement of facts.'

"A funny thing about this case is that the boycott has been on this firm for more than a year. Now, the unions have their attention directed to it for fair."

And the peculiar arrangement of type in the said article, whereby particular display is given to the words "Boycott Buck Stoves and Ranges" and "Unfair to Organized Labor," without making these direct statements in the context of the article published, was devised and designed for the express purpose of violating the injunction of this court, whereby the publication of these statements is forbidden, and of causing the said publication to be reprinted and distributed and scattered broadcast throughout the land.

The said publication in the January 9th, 1908, issue of the United Mine Workers Journal was taken up and followed by the labor press, as it was intended to be, and was extensively reprinted and circulated broadly, throughout the country, including the Cleveland Citizen, of Cleveland, Ohio, published by the United Trades and Labor Council of that City, in its issue of January 18, 1908; the Labor Journal, the official organ of the New York Allied Printing Trades Council and of the Central Trades and Labor Council, published at Rochester, New York, in its issue of January 10, 1908; the St. Louis Labor, published at St. Louis, Missouri, in its issue of January 18, 1908, and in its weekly issues from then to the present time, and the Springfield Tradesman, published at Springfield, Missouri, in its issue of January 18, 1908; all as will be seen by reference to the deposition of the said Samuel Gompers, on file and of record in this cause, and the exhibits herewith filed, to all of which reference is hereby made.

XIX. Thereafter, to-wit: in the March, 1908, number of the American Federationist, the said Samuel Gompers, in the editorial column thereof, at page 192, in pursuance of his plan to nullify the said order of the court in this cause passed, to disregard and disobey the same, to injure and interfere with the petitioner's business and the sale of its product by means forbidden in the said order, and to induce the members of the American Federation of Labor, and the public, not to patronize the petitioner, or buy its product, and to keep the boycott against the petitioner constantly in mind, and to maintain the same, though forbidden to do so by the said order, published the following statement:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

XX. And, for the like purpose, the said Samuel Gompers and the said Frank Morrison published, in the April, 1908, number of the American Federationist, the statements hereafter referred to; the final decree in this cause granting a permanent injunction against the defendants, the said Samuel Gompers and Frank Morrison included; having been entered on the 23rd day of March, A. D. 1908, and prior to the publication of the said April, 1908, number.

In the editorial column thereof, under his own name, the said Samuel Gompers published, at page 279, the following:

"The temporary injunction issued by Justice Gould, of the Court of Equity, of the District of Columbia, in the (Van Cleave) Buck's Stove and Range Company of St. Louis against the American Federation of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia.

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

And in the official column of the said issue, at page 295, over their signatures, in an official letter addressed to state branches and central bodies, the said Samuel Gompers and Frank Morrison published the following statement:

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove and Range Company of St. Louis.

"Fellow workers, be true and helpful to yourselves and to each other. Remember that united effort in cause of right and just must triumph."

XXI. Thereafter, to-wit: on the 19th day of April, A. D. 1908, in the course of a public address to a large gathering of working people in the City of New York, the said Samuel Gompers, for the like purpose, made the following statement:

"They tell us that we must not boycott. Well, if the boycott is illegal, we won't boycott. But I have no knowledge that any law has been passed or any order issued by any court compelling us to buy, for instance, a range or a stove from the Buck's Stove and Range Company. You know that myself and several others are enjoined from telling you, and we are not prepared to tell you, that the Buck's Stove and Range Company is unfair. There are a number of men who have been having suit brought against them for two hundred and forty thousand dollars. That is not very much, between you and me; but a few hatters in Danbury, Connecticut, are being sued for saying that Loewe and Company, hat manufacturers of Danbury, Connecticut, are unfair. I am not prepared to say that that is in violation—that they are unfair.

"Of course, in the case of the Buck's Stove and Range Company, if I told you that the Buck's Stove and Range Company was still unfair, when I got back to Washington tomorrow, or some place where they say people play checkers with their noses—well, as I say, I am not prepared to tell you that these things are unfair. But there is no law, no court decision that compels you to buy them, nor does any law compel you to buy anything without the union label.

"But boycotting, I think—I am sure that the term itself has been coined within my lifetime. Boycotting, in its essence and effect and practice, has been in vogue since man began. I do not care what conception you may have of the beginning of human exist-

ence. I still assert that the word 'boycott' had its origin from the beginning of man's life. Of course, it was not known as the boycott. The term 'boycott' originated in Ireland about twenty-five years ago, when the people of the Green Isle were up in protest against British mis-rule, and they adopted a plan against a certain agent for one of the land owners. This agent was known by the name of Captain Boycott. They did not say that they were going to boycott him, but they simply said, in the language of the time, that they were going to send to Coventry. Coventry was not an attractive country place, so that after the action had been accomplished in regard to this gentleman, the term, instead of sending anyone to Coventry, was changed to boycotting him; in other words, it was either an implied understanding or an express declaration that the people would have no dealings with him insofar as it was possible. And then came the word 'boycott,' and it has come into our dictionaries and into our lexigraphs, as well as into our court decisions. Now, my friends, I do not think that what is human to do, what it is human and humane to do, can be by any species of misinterpretation expected to be an illegal or improper act. You can not make me buy anything I do not want to buy. I can tell my friends to do likewise, and they have a right to do what I have a lawful right to do and I have a legal right to tell them to do. No man has a vested right in my patronage. I have a right to bestow; I have a right to withhold and transfer it to anyone else, and I want to say this about that, injunction or no injunction, I won't buy a Loewe hat nor a Buck's stove or range."

And the said Samuel Gompers made the foregoing remarks in pursuance of his plan of violating, disregarding and disobeying the said order of the court and keeping the boycott against this petitioner in the minds of the members of the American Federation of Labor, and of the public, and for the purpose of urging and encouraging the enforcement of the said boycott against the petitioner, of deterring dealers from buying petitioner's product or offering same for sale, and of ruining and destroying its business.

XXII. And, in pursuance of his said plan, and for the like purpose, thereafter, in the editorial column of the May, 1908, number of the American Federationist, under his own name, at page 383, the said Samuel Gompers published the following statement:

"I want to assure you on my word of honor that so long as I live I will never buy a Loewe hat or a Buck's stove or range until these gentlemen come into agreement with organized labor and grant us conditions of fairness. Then they will get support and help. Until then, you may call it by any other name—boycott or no boycott—but I won't buy your hats anyhow."

XXIII. And, in further pursuance of his said plan, and for the like purpose, the said Samuel Gompers, in a public address delivered before a large gathering of working people on to-wit: the first day of May, A. D. 1908, in the City of Chicago, Illinois, made the following statement:

"I might say just parenthetically about the hatters' case that you are not now permitted to boycott the Loewe hats, but I want to call

your attention to the fact that there is no law compelling you to wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. That applies equally to Mr. Van Cleave's stoves and ranges. And, by the way, I don't know why you should buy any of that sort of stuff. I won't; but that is a matter to which we can refer more particularly in our organizations."

And thereafter, for the purpose of more widely disseminating the said statement, the said Samuel Gompers published the
410 same in the June, 1908, number of the American Federationist, at pages 467 and 468 thereof.

XXIV. And, for the purpose of more effectually carrying out his said plan, and for the like purpose, the said Samuel Gompers, thereafter, in the editorial column of the July, 1908, number of the American Federationist, at page 531 thereof, under his own name, published the following statement:

"The Supreme Court of the District of Columbia has made permanent the injunction issued by Justice Gould enjoining the American Federation of Labor, its officers, its affiliated unions and their members and friends from declaring that the Van Cleave Buck Stove and Range Company of St. Louis is on the unfair list of the American Federation of Labor or the publication of that statement in the American Federationist. An appeal will be taken to the Court of Appeals of the District of Columbia, and, if necessary, to the United States Supreme Court. The injunction does not compel anyone to buy the Van Cleave Buck Stoves and Ranges, nor has any decree been issued compelling anyone to buy Loewe's hats."

XXV. Each and every of the issues of the American Federationist in this petition mentioned has been circulated and distributed, in large numbers, by the defendant Frank Morrison, Secretary of the defendant American Federation of Labor, and circulating and distributing agent of the American Federationist, and the said issues have been so distributed by him, in disregard and violation of the order and decree of the court in the premises, among the various subordinate unions of the defendant American Federation of Labor, as described in paragraph IV of the original bill in this cause, and also to the public, and extensively read throughout the country; and the said Frank Morrison, in so doing, has been fully aware of the contents of the said publication, and prompted by the same purposes which controlled and influenced the defendant Samuel Gompers in preparing and delivering the writings and speeches so set out in the said issues of the American Federationist.

XXVI. Though the said Samuel Gompers, Frank Morrison, John Mitchell and the other defendants to the original bill, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them, are, by the order of this court of December 18, 1907, restrained and enjoined pending litigation, and by the order of March 23rd, 1908, perpetually restrained and enjoined from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and

from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails, or in any other manner, any copies or copy of the American Federationist or any other printed or written newspapers, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize" or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product, in connection with the term "Unfair," or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention to the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its products, or that the same are, or were, or have been declared to be "Unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling, or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other States and Territories of the United States, or elsewhere where-soever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid; yet, by the acts, means, devices and subterfuges aforesaid, the said Samuel Gompers, Frank Morrison and John Mitchell have designed and sought to continue in force and effect, and have continued in force and effect, in willful disregard, violation, disobedience and contempt of the aforesaid order and decree of this court, the boycott against petitioner, and the conspiracy recited in the bill to destroy its business, which they and the other defendants have

been and are, by the said order and decree, restrained and enjoined from continuing:

Wherefore, petitioner prays as follows:

(1) That a rule be laid upon the said Samuel Gompers, Frank Morrison and John Mitchell, requiring each of them to show cause, at a time to be fixed by the court, in said rule, why the writ of attachment should not issue against him, and why he should not be adjudged by the court to be in contempt of its order and its decree in this cause, and be punished for the same.

(2) And that petitioner may have such other and further relief as the nature of its case may require.

STATE OF MISSOURI,

City of St. Louis, ss:

I, James W. Van Cleave, on oath say that I am President of The Buck's Stove and Range Company, the petitioner named in the foregoing and annexed petition, whose name I have subscribed and whose seal I have affixed thereto in my said capacity, in which capacity I make this affidavit: that I have read the said petition and know the contents thereof; that the allegations therein set forth upon personal knowledge are true, and that those set forth upon information and belief I believe to be true.

Subscribed and sworn to before me, this -- day of ---, A. D. 1908.

411 To the foregoing offer Mr. Ralston objected to so much as was read, and to the introduction of the whole as incompetent and irrelevant, and not relating to the issues in this case.

Mr. Davenport offered in evidence from the November 1908 Federationist, at page 983, as follows:

"Most of Mr. Gompers' speech was devoted to a discussion of the injunction question, and he is at this time on trial before a federal court in Washington, together with John Mitchell and Frank Morrison, charged with contempt of court. Mr. Gompers said all he did was to print in the American Federationist articles regarding the Buck's Stove case, in which an injunction was issued against the A. F. of L.

"I am enjoined by that Court order from even mentioning the case in any manner," he said.

"I am in contempt of court right now for speaking of the case, but I propose to speak of it just the same. I may go to jail, but I shall discuss it. If I don't I'll explode."

To the foregoing Mr. Ralston objected as incompetent and irrelevant, and not referring in any manner even indirectly, to the injunction order, the violation of which is charged in this case, the injunction charged to have been violated being that of December 23, 1907, and the speech appearing to have been made on December 29, 1908.

Mr. Davenport offered in evidence from page 52 of the January 1909 Federationist, as follows:

The argument in the contempt proceedings against John Mitchell, Frank Morrison, and Samuel Gompers to show cause why they should not be punished for violation of the Van Cleave Buck's Stove and Range Company's injunction, closed November 16th. Justice Wright reserved his decision. Up to this writing, December 15th, the decision has not been rendered. In connection therewith the attention of our readers is directed to a letter from our attorneys, Ralston & Siddons, published in another part of this issue.

412 Also from page 71, the following:

The Law's Courtesy and Delay.

The following letter from the counsel for the A. F. of L. refers to an interesting phase in the Van Cleave Buck's Stove and Range contempt proceedings against John Mitchell, Frank Morrison, and Samuel Gompers:

"WASHINGTON, D. C., *December 7, 1908.*

Mr. Samuel Gompers, President A. F. of L., Washington, D. C.

DEAR SIR: Referring to our telephonic conversation of this morning and reviewing the letters and telegrams in the case, we beg to say that we find that on November 9th, we telegraphed Judge Parker that after discussion the court had set the case for hearing Thursday of that week. On the 10th he wired us that it was not possible for him to be present in Washington Thursday. In reply to this telegram we wired him that we expected the hearing on Thursday to consist of reading the evidence and that the case would go over until Monday for argument and inquire if he could be present Monday and Tuesday. In response he said, 'Wednesday safer for me. Other side will consent.' We thereupon went into court and as the result of our application were compelled to wire him, 'Court will not accept next Wednesday. You can enter on the case either tomorrow night or Monday the case to be concluded by Thursday. Wire immediately your wishes.' In reply to this telegram he wired us as follows: 'I can not be in Washington on Monday. Must on that day argue a case in the Court of Appeals set down a month ago. Tuesday morning is the earliest moment I can reach Washington and then only by getting relieved from Tuesday's court and by riding all night from Albany. If that will do answer at once, if not I can not be present.'

We wrote him in response to this that: 'Your telegram came after we were compelled to make such arrangement as we could. The best we could do was to commence Monday morning.'

On November 16th we informed you of the condition of affairs by wire.

On November 13th, in a letter of that day, we wrote Judge Parker as follows: 'We have before us your note of yesterday and in reply

have to say that we shall exceedingly regret it that you can not be present at the hearing.'

Meanwhile, on November 12th, Judge Parker wrote us as follows:

'I very much regret that I am to be denied the opportunity of appearing with you in court on behalf of Messrs. Gompers, Mitchell, and Morrison. I must confess I do not understand the determination of the court. It is the first time in my experience, as judge or lawyer, that I have known a court to refuse a postponement on any reasonable ground of a hearing (in which the public interest would not be affected by a delay), where the counsel on both sides stipulated for it. And were it not for your letter and telegram stating the judge's position, I should feel that it could not be possible that professional engagements of long standing in courts of quite as much prominence, should not be regarded as sufficient ground for a judge to postpone an argument for a day or for a week, or for two weeks if necessary, when the other side consents and the public interest will not suffer. And, as you know, the other side have consented in this matter. So that the refusal to recognize prior professional engagements of counsel is out of the court's own head.'

On November 19th Judge Parker sent a letter to Judge Wright, copy of which reads as follows:

'It was with great surprise and regret that I learned of your refusal to permit an adjournment over Monday to enable me to argue two cases in the court of appeals of this state, one of which had been set for that day for over a month, and the other had been moved forward by the consent of counsel from a later day so as to enable me to appear in your court. It was a surprise to me that your honor should refuse an adjournment of not exceeding two days under such circumstances, especially when counsel on both sides consented and no public interests stood in the way. It was a surprise, because, with some experience, I am obliged to say that I have never before heard of a like ruling, and I exceedingly regret the ruling as I much desire to present to you orally my views that the matters complained of are within the constitutional rights of my clients.

'I am advised by the attorneys with whom I am associated that you consented to receive briefs on both sides and I venture to forward a hastily prepared memorandum which calls attention to some considerations that I had hoped to discuss more fully orally.'

We include this letter of Judge Parker's to complete our record of this phase of the case.

Very truly yours,

RALSTON & SIDDONS."

413 To the foregoing offers, Mr. Ralston objected as incompetent, irrelevant, and not material to the issues in this case.

Mr. Davenport offered in evidence the financial statement published in the American Federationist for the months of April, May, June, July, August, and September, October and November 1908.

To the foregoing Mr. Ralston objected as incompetent and irrele-

vant, and called upon Mr. Davenport to indicate the particular things in the large body of matter he had offered which he considered in any degree competent.

Mr. Davenport indicated from the January Federationist, on the date of January 31st, the following:

"Postage on American Federationist, Post Office Department, \$17.93."

It was stipulated (page 579) between counsel for the committee and respondents, as follows:

That in the case of the Buck's Stove & Range Company versus the American Federation of Labor, Samuel Gompers, John Mitchell, Frank Morrison and others, being Equity Cause No. 27,305, then pending before it, the Supreme Court of the District of Columbia granted the injunction pendente lite alleged in the charges, on the 18th day of December 1907; that the injunction bond thereby required was approved by the Court and filed in the cause on the 23rd day of December, 1907; and that the said Court passed a final decree of injunction in said cause on the 23rd day of March, 1908, as alleged in the charges, with leave to the respondents, or any of them, to show any inaccuracy, if there is any, in the copy 414 of these two injunctions which are filed with the charges.

To the foregoing Mr. Ralston for the respondents agreed that the committee should establish the facts stated in that way, without any admission on their part, and expressly reserving all objections that might exist to their competency, relevancy and materiality in any manner, simply waiving the formal proof.

James O'Connell (page 580) being recalled, testified in substance as follows:

That he had made some investigation and found that he attended the reception given by the Washington Central Labor Union on the return of the delegation from the Denver Convention in 1908, attending there about ten o'clock or 10:30. Mr. Gompers was addressing the meeting and he addressed it later. Does not recall seeing Morrison there. Recalls when Gompers, Morrison and Mitchell were found guilty of contempt of court by Justice Wright. Attended the next meeting of the Executive Council held in the City of Washington with Gompers, Duncan, Mitchell, O'Connell, Morris, Huber, Valentine, Alphine, Lennon and Morrison, present, Hayes absent the first day. Does not recall independently of the record that Gompers made a report that day to his colleagues of the Executive Council. It was the usual custom. That day was January 11, 1909.

Mr. Davenport offers in evidence reprint of the editorial by Samuel Gompers, in the American Federationist of February 1908, entitled "Free Press and Free Speech Invaded," etc., which was marked Exhibit A, H. No. 3, and is as follows:

By Samuel Gompers.

Free Press and Free Speech Invaded by Injunction Against the
A. F. of L.—A Review and Protest.

Justice Gould, of the Supreme Court of the District of Columbia, issued an injunction, on December 18, 1907, against the American Federation of Labor and its officers, and all persons within the jurisdiction of the court.

This injunction enjoins them as officials, or as individuals, from any reference whatsoever to the Buck's Stove and Range Co.'s relations to organized labor, to the fact that the said company is regarded as unfair; that it is on an "unfair" list, or on the "We Don't Patronize" list of the American Federation of Labor. The injunction orders that the facts in controversy between the Buck's Stove and Range Co. and organized labor must not be referred to, either by printed or written word or orally. The American Federation of Labor and its officers are each and severally named in the injunction. This injunction is the most sweeping ever issued.

It is an invasion of the liberty of the press and the right of free speech.

On account of its invasion of these two fundamental liberties, this injunction should be seriously considered by every citizen of our country.

It is the American Federation of Labor and the American Federationist that are now enjoined. Tomorrow it may be another publication or some other class of equally law-abiding citizens, and the present injunction may then be quoted as a sacred precedent for future encroachments upon the liberties of the people.

With all due respect to the court it is impossible for us to see how we can comply with all the terms of this injunction. We would not be performing our duty to labor and to the public without discussion of this injunction. A great principle is at stake. Our forefathers sacrificed even life in order that these fundamental constitutional rights of free press and free speech might be forever guaranteed to our people. We would be recreant to our duty did we not do all in our power to point out to the people the serious invasion of their liberties which has taken place. That this has been done by judge-made injunction and not by statute law makes the menace all the greater.

There is no law in our country and we feel safe in saying that no law could be passed by the consent of the people which would deny to the humblest citizen the right of free expression through speech or by means of the press, and yet this is now attempted by injunction.

416 There is no disrespect to the judge or the court when we state with solemn conviction that we believe this injunction to be unwarranted.

Suppression of freedom of the press is a most serious thing whether occurring in Russia or in the United States. It is because

the present injunction commands this that we feel it our duty to enter an emphatic protest.

It has long been a recognized and an established principle that the publisher should be uncensored in what he publishes, although he may be held personally and criminally liable for what he utters. If what is published is wrong or false it is within the power of the courts to punish by using the ordinary process of law, but not by a judge-made injunction.

The publication of the Buck's Stove and Range Co. on the "We Don't Patronize" list of the American Federation of Labor is the exercise of a plain right. To enjoin its publication is to invade and deny the freedom of the press—a right which is guaranteed under our constitution.

The right to print which has grown up through the centuries of freedom, has its basis in the fundamental guarantees of human liberty. It has been defended and upheld by the ablest minds. It ought not to be forbidden by judicial order.

The matter of attempting to suppress the boycott of the Buck's Stove and Range Co., by injunction, while important, yet pales into insignificance before this invasion and denial of constitutional rights.

We shall consider this question fully, and we urge the most serious and careful thought on the subject by our fellow-workers and fellow-citizens.

For years we have pointed out the fact, and we believe the greater part of the intelligent public are in entire accord with us, that the injunction process was originally intended to apply to property rights—personal liberty. In fact it never is applied to the personal rights and liberties of citizens other than if these citizens are wage-workers.

We discuss this injunction and feel obliged as a matter of conscience and principle to protest against its issuance and its enforcement, yet we desire it to be clearly understood that the editor of the American Federationist does not consider himself thereby violating any law of either state or nation, nor does he intend or advise any disrespect toward the courts of our country. And yet inherent, natural, and constitutional rights and guarantees must be defended and maintained.

The men composing the organizations federated in the American Federation of Labor are as law abiding, as honorable and as upright as can be found in any walk of life.

We feel it our solemn duty to defend our unions and the men connected with our movement from any insinuation that they are lawless or that they are associated together for any unlawful purpose.

Though the wage-workers or their chosen representatives may be the pioneers in this protest, though they may be misunderstood, ay, even persecuted for conscience sake; yet will their labors bear fruit and coming generations of our people will thank those who, at this time, had the clarity of vision to see the right and the courage to strive manfully for the protection of our liberties against aggression.

This injunction against the American Federation of Labor contains many points with which we have hitherto been obliged to deal at long range.

We had hoped that the application for this injunction would be denied on the ground that there was no real basis of complaint in the plaintiff's allegations against the American Federation of Labor. The American Federation of Labor was represented by able attorneys and their arguments showed clearly that there was nothing unlawful in the fact that large numbers of wage-workers simultaneously declined to purchase the Buck's Stoves and Ranges.

The plaintiff for the Buck's Stove and Range Co., also its president, is no other than Mr. Van Cleave, also president of the National Association of Manufacturers. The recent contemptible attacks of the manufacturers' association's hirelings upon the character of the men of labor are still fresh in the public mind. The application for an injunction against the publication as "unfair" of the Buck's Stove and Range Co. by the American Federation of Labor, savored very much of an attempt to use the courts in the prosecution of the manufacturers' association's avowed union-crushing campaign.

We do not for an instant insinuate or affirm that Justice Gould knowingly lent himself to the machinations of the manufacturers' association, but we feel convinced that he was not at all familiar with the unscrupulous means which the manufacturers' association adopts in order to accomplish its purposes, or he might have hesitated to accept in good faith the allegations of the Buck's Stove and Range Co. in regard to its treatment by the American Federation of Labor.

It is quite true that certain union employes to whom the Buck's Stove and Range Co. declined to concede the prevailing hours of labor, made this fact known to their fellow-workers through the columns of the American Federationist and through many other publications in various parts of the country, and the American Federation of Labor endorsed their position and published the same.

The entire procedure was truthful, fair, and honorable. We had a right to inform the public as to the facts in the case. Wage-workers and, indeed, many others prefer to give their patronage to firms which employ union labor and whose product, for that reason, is likely to be of a more satisfactory quality to the consumer.

If the champions of the non-union shop are so proud of their stand in the matter and so convinced of their own fairness and wisdom we really fail to see why they should object to the publication of that fact.

If, as they claim, the public is with them and disapproves of unions and their method of "collective bargaining," we should think that the publication of the fact of a firm declining to pay union wages or concede union hours would be its best possible advertisement and one that would be eagerly sought. Not so it seems. The Buck's Stove and Range Co. judging from the terms of the injunction desires to stifle the voice of labor and enforce a continuous and unbroken silence on the subject of its bad standing with union workmen.

In the application for the injunction it was alleged by the Buck's

Stove and Range Co. that its business had suffered seriously from the refusal of union workmen and their friends to purchase its stoves and ranges. But would not absolute silence on our part as to its hostile attitude toward certain union employes be dishonest? Why should we encourage our members and friends to buy the Buck's Stoves and Ranges under the apprehension that this company deals fairly with union labor? Could not union employers then accuse us of unfair discrimination, of trickery and humbug?

If Mr. Van Cleave's opposition to the union shop is a matter of honest and conscientious conviction we should think he would writhe in pain under an injunction which prevents the publication of that fact.

The injunction is printed in full in this issue of the American Federationist. We hope our readers will study carefully every word and every phrase. It is a most remarkable injunction.

Justice Gould seems to base this injunction on the assumption that there has been a combination of numbers of wage-earners "conspiring" to commit unlawful acts. Such is not the fact. The public should understand clearly the difference between combinations for unlawful purposes and the voluntary associations of wage-earners for entirely lawful and proper purposes.

Let us for a moment consider what are some of the aims and purposes of our labor movement; to render means and opportunity of employment less precarious; to improve the standard of life; to uproot ignorance and foster education; to establish a normal work-day; instill character, manhood, and an independent spirit among our people; to establish the recognition of the interdependence of man upon man, and that no man can be sufficient unto himself; that he must not shirk a duty to his fellows; to take children from the factory and the workshop, the mill, the mine, and to give them the opportunity of the school, the home and the playground. In a word, to lighten toil, brighten man, to cheer the home and the fire-side, to contribute our effort to make life the better worth living. To achieve these ends, all honorable and lawful means are not only justifiable, but commendable, and should receive the sympathetic support of every right-thinking American, rather than bitter, relentless antagonism.

But to return to the consideration of the injunction, Justice Gould quotes Judge (now Secretary of War) Taft's definition of a boycott as follows:

A boycott is a combination of many to cause a loss to one person by coercing others, against their will, to withdraw from him their beneficial business intercourse through threats that unless these others do so, that many will cause serious loss to them.

Justice Gould adopted this definition in preference to that found in the *Cyclopadia of Pleadings and Practice* and seemed to feel that Judge Taft furnished an illustrious precedent for the granting of this injunction.

419 True, Secretary Taft has an injunction history (see American Federationist editorial, October and November, 1907), but since he has become a candidate for President he does not seem proud of that record. He has recently tried to "explain" and not

very successfully, because he, like many other injunction judges did not think it necessary, before granting sweeping injunctions, to acquire a knowledge of modern economics and the proper application of judicial principles thereto. Is Judge Taft the highest authority on what constitutes a boycott or grounds for an injunction of this character?

The very injunction proceedings from which Justice Gould quoted Judge Taft, and other precedents he mentions, were cases in which the injunction privilege was abused by being wrongfully applied. Two wrongs do not make a right in an injunction any more than other affairs of life.

Secretary Taft says a boycott is a combination of many to cause a loss to one person by coercing others against their will to withdraw from him their beneficial business intercourse by threats.

We defy any one to prove a single instance in this case where men or organizations combined to "coerce" others against their will to withdraw patronage from the Buck's Stove and Range Co. Neither coercion, threats, nor conspiracy, in the unlawful sense have been resorted to, yet the whole injunction is based upon this wrong assumption.

Our unions and the men of labor are doing a public service in informing fellow-workers and friends of the fact that certain employers refuse to recognize the associated effort of the workers. This very class of employers organize themselves into combinations and vigorously use the secret black-list to hound good citizens and union men from employment. They use every weapon, lawful and unlawful, to crush unions. No wonder they are ashamed to have their tactics made public.

The members of organized labor are not themselves obliged to refrain from dealing with the firms on the "We Don't Patronize" list of the American Federation of Labor. The information is given them. There is no compulsion. They are entirely free to use their own judgment.

It must be remembered, however, that for the one firm which declines to employ union labor there are probably a score in the same business which prefer it on account of its greater skill and reliability, and for many other sound, economic reasons. Such firms are conceded to turn out a higher quality of product than non-union concerns. The members of organized labor naturally desire to expend their earnings to the best advantage when purchasing and wish to be informed as to what firms do and do not employ union labor. In purchasing, it is often a question of the quality of the goods offered. The "boycott" is a letting alone of undesirable goods.

No person can be compelled to buy an article. If the purchaser chooses to let alone certain products for any reason or for no reason there is no way of compelling him to buy.

This injunction can not compel union men or their friends 420 to buy the Buck's Stoves and Ranges. For this reason the injunction will fail to bolster up the business of this firm which it claims is so swiftly declining.

Individuals as members of organized labor will still exercise the

right to buy or not to buy the Buck's Stoves and Ranges. It is an exemplification of the saying that: "You can lead a horse to water but you can't make him drink," and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not purchase the Buck's Stoves and Ranges.

It may not be amiss here to say that in all these proceedings, whether before the court or in the contest forced upon labor by the Buck's Stove and Range Co., no element of personal malice or ill-will enters. Labor is earnestly desirous of entering into friendly relations with employers, and this is none the less true of its desire to reach an honorable adjustment and agreement with the Buck's Stove and Range Co. So long, however, as that company continues in its hostile attitude to labor, denying it the right to organize, discriminates against union members, and refuses to accord conditions of employment generally regarded as fair in the trade, it must expect retaliatory measures; these measures always, however, within the law and for the purpose of ultimately reaching an honorable, mutually advantageous agreement.

The publication of the Buck's Stove and Range Co. on the "We Don't Patronize" list of the American Federation of Labor is only an incident in the history of the case. These stoves might have been let as severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing that firm from the list against which we primarily protest, it is this injunction invading the freedom of the press.

Justice Gould, in one portion of his opinion, says:

"Defendants [the American Federation of Labor] has the right either individually or collectively to sell their labor to whom they please, on such terms as they please, and to ***decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves.**"

Here he states precisely the whole case of the American Federation of Labor. This is what we have done. This is the sum total of labor's offending. The publication of the Buck's Stove and Range Co. and other firms on the "We Don't Patronize" list is merely giving truthful information at the request of our members as to whether or not certain firms employ union men and concede the other conditions of employment usually granted by those concerns which recognize union labor.

It would seem that having made the above-quoted statement, Justice Gould would have found in it the reason for a refusal to issue the injunction. He, however, goes on to assume that there has been some unwarrantable interference with the plaintiff's business, though neither in his opinion nor in the injunction itself does he make it clear how he arrived at the conclusion that the union course was any other than as indicated in his own language.

We wish to point out that there exists no law under which we

*Heavy type and brackets are ours.

could have been haled before any court for the exercise of
421 free speech and freedom of the press in order to explain to
our fellow workers and friends the circumstances under
which the Buck's Stove and Range Co. manufactures its goods, and
its attitude toward labor. Yet, under the terms of this injunction we
are peremptorily cut off from the exercise of these rights.

We have had occasion in the past to call attention to the fact
that the danger of the injunction, as used in labor cases and in
no other, is that persons are often forbidden the doing of perfectly
lawful things—are enjoined from the exercise of their rights as
citizens, and then found in contempt and punished if they fail to
submit to the course laid down in the injunction mandate.

It is puzzling to be charged with coercion, conspiracy and what
not, and enjoined from the exercise of free speech and free use of
the press just as if we had been guilty of those things of which
we are entirely innocent.

It is true that there do exist illegal combinations and con-
spiracies for the purpose of unwarrantable interference with busi-
ness, or even its destruction, but these are not organized by wage-
workers. The criminal conspiracies in restraint of trade are organ-
ized by pirate trusts, by rascally promoters, by unscrupulous manip-
ulators of finance.

The air is filled with the lamentations of the innocent victims of
such conspiracies, but do we ever hear of these pirates in the busi-
ness world being enjoined from continuing their depredations or
threatened with contempt proceedings if they do not desist from
their unlawful practices which even involve property rights. Never!
These injunctions are applied to wage-workers exclusively though
they involve personal rights and liberties. **It is this denial of equality
before the law against which we protest.**

In making these statements we are not indulging in unjustifiable
or disrespectful criticism of the judge who issued this injunction.
We assume that he acted in accordance with the dictates of his
conscience and his best judgment.

One point we have been making for years in regard to other
injunctions is equally applicable to this case. We contend that the
power to issue injunctions involving personal rights and liberties
should not be left to the discretion of any judge no matter how
wise, how discreet, or how learned.

President Roosevelt in his recent message to Congress made the
following comment on the abuse of the injunction power:

"Instances of abuses in the granting of injunctions in labor dis-
putes continue to occur, and the resentment in the minds of those
who feel that their rights are being invaded and their liberty of
action and of speech unwarrantably restrained continues likewise to
grow. Much of the attack on the use of the process of injunction is
wholly without warrant; but I am constrained to express the be-
lief that for some of it there is warrant. This question is becoming
more and more one of prime importance, and unless the courts
will themselves deal with it in effective manner, it is certain ul-
timately to demand some form of legislative action. It would be

most unfortunate for our social welfare, if we should permit many honest and law-abiding citizens to feel that they had just cause for regarding our courts with hostility. I earnestly commend to the attention of the Congress this matter, so that some way may be devised which will limit the abuse of injunctions and protect those rights which from time to time it unwarrantably invades. Moreover, discontent is often expressed with the use of the process of injunction by the courts, not only in labor disputes, but where state laws are concerned."

We earnestly hope that public opinion on this subject will be so compelling, so wide-spread, and so intense that Congress will at an early date crystallize into statute law the expression of this feeling by enacting the American Federation of Labor bill "to limit and regulate injunctions" which is designed to restrain the improper use of the injunction power and to protect rights which have been unwarrantably invaded.

It is our earnest hope that our protest of today in behalf of justice and right may find expression in the laws of tomorrow.

We have already stated that the case of the Buck's Stove and Range Co. against the American Federation of Labor and its officers is represented by able counsel. Additional counsel, foremost at the bar of our country has been added. Regardless of any phase which the case may assume, it will be continued by the American Federation of Labor until a final decision has been rendered by the Supreme Court of the United States.

We repeat here what we have elsewhere said, that when the true historian shall present to the world the great struggles of the past and of the present; when the tinsel and false coloring shall have been removed from the real figures and events, there will be revealed of mankind's astonished gaze the continuous struggle of labor against tyranny, brutality, and injustice; the struggle for the right, for humanity, for progress, and for civilization. The trade unions and the Federation of our time are in their very essence, the continuity of the historically developed progress of labor through the ages. We can not stop; we must go on.

"In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove and Range Company declares that punishment for violation of the injunction issued by Justice Gould, against the American Federation of Labor, applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation of Labor assures us that this construction of the court's order is accurate."

To the foregoing offer Mr. Ralston objected as to its competency and relevancy, and because of want of proof of the time of the reprint and the date of the circulation.

Mr. Davenport (page 598) offered in evidence the part of the address of Mr. Gompers quoted in the charges, being from the January 1909 Federationist, page 54, as follows:

I have said and I now want to repeat here, not in bravado, but in full consciousness of the responsibility with which the statement may be interpreted, that when it comes to a choice between obeying an injunction denying me the right of free speech, free expression of the thoughts that come to my mind and which are not in violation of the laws of my country, I shall have no hesitancy in standing upon my constitutional rights. We have a dispute with the Van Cleave Buck's Stove and Range Company; I have been enjoined from saying that I won't buy a Buck's stove or range, and I won't, and because I have said this in several ways, by discussion of the case editorially in the American Federationist, and Frank Morrison has sent out the American Federationist containing these things I have said, and because John Mitchell was presiding over the convention of the United Mine Workers, when a motion was placed before that body, advising the members of the Mine Workers not to buy a Buck's stove or range we have been tried for contempt—that is, we have been called upon to show cause why we should not be sent to jail, and I could not show cause.

The things I have been charged with, I did. I have not denied them. I have discussed them on the platform, as I discuss them here. I have written circulars about them. Secretary Morrison sent them out, and I ask you now to place yourself in my position. What would you do?

To the foregoing offer Mr. Ralston objected as incompetent and irrelevant, as being but a part of the speech treating of the same general subject matter, and not the whole, and not being a part of the charges with reference to which the respondents were called on to show cause, but purported to have occurred long after the decree claimed to have been violated.

Mr. Davenport offered in evidence from the American Federationist, November 1908, page 1001, the following:

“Official.

“A. F. of L. Executive Council Meeting.

“*Report of President Gompers.*

“WASHINGTON, D. C., Sept. 9, 1908.

“Executive Council, American Federation of Labor.

“COLLEAGUES: I beg to submit herewith report of the general status of the labor movement, particularly as to those matters affecting the rights and interests of the working people, as well as the work performed since the last meeting of the E. C. and that which has been carried out as outlined by you at that meeting.”

* * * * *

Buck's Stove and Range Company Injunction Suit.—As you have been previously advised, Vice-President Mitchell, Secretary Morrison and myself have been cited to appear before the Supreme Court of the District of Columbia to show cause why we should not be pun-

ished for contempt for violation of the court's injunction. The petition upon which the Buck's Stove and Range Co. asks for our punishment was published in the September issue of the American Federationist, and I suggest that it be read in connection herewith, as it will show to what extent the E. C. and officers and members of affiliated organizations and all others are enjoined and what they are enjoined from doing.

Your attention is especially called to a feature of the case of this injunction. If all the provisions of the injunction are to be fully carried out, we shall not only be prohibited from giving or selling a copy of the proceedings of the Norfolk convention of the A. F. of L. either a bound or unbound copy; or any copy of the American Federationist for the greater part of 1907, and part of 1908, either bound or unbound, but we, as an E. C. will not be permitted to make a report upon this subject to the Denver Convention. Unless we violate the terms of the injunction, we are prohibited from referring to the case at all, either in our report to the convention or to others, and should a delegate to the convention ask the E. C. what disposition has been made, or what the status of the case is, we shall be compelled to remain silent. For one, I am unwilling to be placed in such a position. I have neither the inclination nor the intention of violating the process of the court, but I can not see how it is possible for us to hold up our heads as honest men and still refuse to give an accounting to our fellow workers and to the public as to the status and outcome of this case.

I have already referred to the fact that Messrs. Mitchell, Morrison and myself were cited to appear and show cause why we should not be punished for contempt of court. The hearing occurred September 9th, and after argument Justice Gould decided to give 60 days for taking of testimony of both sides. The case in its general aspect and status, as already reported to you, is that an appeal has been taken to the Court of Appeals of the District of Columbia against the injunction made permanent by the Supreme Court of the District.

The foregoing offer was objected to as incompetent and irrelevant, if offered as an admission sufficiently proven, both as to being an admission and as to the subject matter to which it relates; that it may not be used to support charges alleged in the Committee's report, as it occurred at a date beyond the period complained of.

Mr. Davenport offered in evidence the March 1909 Federationist, page 264, as follows:

"A. F. of L. Executive Meeting.

"(For convenience this abstract of the minutes is not always in the order in which the business was transacted.)

"WASHINGTON, D. C., *January 11-16, 1909.*

"Executive Council called to order Monday, January 11, at 10 o'clock, by President Gompers. Present on roll call: Gompers, Dun-

can, Mitchell, O'Connell, Morris, Huber, Valentine, Alpine, Lennon, and Morrison. Absent, Hayes.

* * * * *

"President Gompers' Report.

"WASHINGTON, D. C., *January 11, 1909.*

"Executive Council, American Federation of Labor, Colleagues:

* * * * *

Judge Wright's Decision in the Contempt Proceedings.—On Monday, December 21st, our counsel advised me that he had been informed that Justice Wright of the Supreme Court of the District of Columbia would render his decision in the contempt proceedings against Mr. Mitchell, Mr. Morrison, and me and that we were directed to be in court at 10 o'clock on Wednesday morning, December 23d. I advised Secretary Morrison and called up Mr. Mitchell over long distance telephone in New York. He urged that I make an effort to secure some change in the date, as he desired to be with his family for Christmas. I had already requested our attorneys to make the effort but the judge declined to change the time. Mr. Mitchell sent me a telegram again urging me to make another effort so that the date for the rendering of the decision might be advanced to Tuesday, December 22d, or deferred until a few days after Christmas. I replied by telegraph stating that Judge Wright was obdurate and from what I knew of his frame of mind, his refusal to change the date of the argument in the contempt proceedings for a day so that Judge Parker, who had an engagement to argue a case before the New York Court of Appeals, could come to Washington and make the leading argument, the counsel for the Buck's Stove and Range Company having agreed to the request for a change in date, I declined to ask any consideration at the hands of Judge Wright.

Mr. Mitchell telegraphed our attorneys to make another effort, stating that last year he was in the hospital; that that was the first time he had ever been away from his family on Christmas; that he had made all arrangements to go and was very anxious to be with his family this Christmas; that he would appreciate it greatly if the judge could change the time to either a day before or a few days after the time set by him. Though convinced that the judge would not change the time set by him, our attorneys wrote a letter to Judge Wright, enclosing the original telegram of Mr. Mitchell. The judge sent a preemptory and negative answer.

Your attention is called to the correspondence of Judge Parker and Messrs. Ralston & Siddons and others relative to part of this matter, and as published in the January issue of the American Federationist.

On Wednesday, December 23d, Justice Wright sentenced Frank Morrison, John Mitchell, and me to terms of imprisonment of six, nine, and twelve months, respectively. Appeal has been taken; bond has been filed for \$3,000, \$4,000 and \$5,000, respectively.

In connection with the decision and sentence your attention is directed to the answers which Mr. Mitchell, Mr. Morrison, and I are preparing and the editorials which I may write, as well as to incidents in connection with the decision and sentence and which are not generally known. You may find them interesting.

* * * * *

426 It might not be amiss to say that during the year 1908 I made between 80 and 100 public addresses, involving traveling over a very wide range of territory; that I was forced to decline about double that number of invitations; that I held between 350 and 400 conferences, and appeared 12 times at hearings before congressional committees having under consideration the various bills in which labor is interested. Then, again, as you recall, for a number of days I was on the witness stand in the taking of testimony in the Buck's Stove and Range Company injunction case, as well as the contempt proceedings arising therefrom, and also in the taking of testimony in the Loewe case. All of this in addition to the regular work of the office, including editing the American Federationist.

The work has been arduous and exacting, but through it all I have endeavored to devote to it every power of which I am capable.

There are many other matters to which reference should be made, but I have endeavored to confine this report somewhat within the limits of your time.

Fraternally yours,

SAM'L GOMPERS,

President, A. F. of L.

The above report was accepted and made part of the record.

To the foregoing offer Mr. Ralston objected as incompetent and irrelevant and furthermore, especially, because it does not appear to be contained in the charges, or in any of the matters associated with the charges in the report of the Committee and to be of date long subsequent to the expiration of the order claimed to have been violated.

Mr. Davenport offered in evidence from the February 1909 Federationist, outside page, as follows:

"Read editorial, February, 1909, American Federationist, Containing Justice Wright's decision and sentence. Editorial by Gompers, Mitchell, and Morrison. Official magazine of the American Federation of Labor."

And from page 132, the following:

"The Decision Reviewed.

"By Samuel Gompers, John Mitchell, and Frank Morrison.

"With the exception of the remarks made to the court as to why sentence should not be pronounced, the defendants have uttered no word in review of this decision. We (Gompers, Morrison, and Mit-

chell) regard it as an imperative duty we owe to all the people to do so now and here."

And from page 142, the following:

Mr. Mitchell is charged with having assisted in the distribution of a certain issue of the American Federationist. The facts are that Mr. Mitchell had no knowledge whatsoever of the matter contained in that number of the American Federationist; he did not participate in its preparation or distribution.

Mr. Mitchell is charged with and admits having presided at a convention of the United Mine Workers of America at which a resolution was adopted declaring as "unfair" the products of the Buck's Stove and Range Company. It was Mr. Mitchell's duty as president of the miners'

* * * * *

427 As a further illustration, take the case of Mr. Morrison.

He is secretary of the American Federation of Labor. The charge against him is that he caused to be mailed the printed official proceedings of the Norfolk convention and the official magazine the American Federationist, as was his imperative duty. If he had placed in the mails matter which was libelous, treasonable, or seditious, he would be equally responsible, with the author of such documents for those acts; but the freedom of the press and the freedom of speech involves the distribution, through lawful channels, of that which may be printed or uttered. He signed the urgent appeal, but pray, after all, in what does the urgent appeal offend? The American Federation of Labor, its officers, its affiliated unions, their members, friends, sympathizers, attorneys, and agents throughout the length and breadth of the country, had an unwarranted injunction served on them, enjoining them from doing things they had a perfect legal right to do.

The American Federation of Labor is not a monied institution. It has little or no funds of its own, and it was necessary to send out an urgent appeal to the men of labor to make voluntary financial contributions, as is now being done, in order that the rights of the men of labor and the constitutional guarantees of free speech and free press might be vindicated before the courts. Indeed, the very fact that the men of labor endeavored to secure means by which their rights might be protected before the courts

* * * * *

428 In the case of Mr. Gompers, in addition to what has already been stated, as soon as the injunction became operative he took the name of the company in question from the "We Don't Patronize List" and from that time until this the name of the company has not appeared thereon. He discussed the injunction and the principles involved in the injunction, both in print and upon the platform. There was no intent to defy the order of the court by calling attention to the violation of fundamental rights of citizens, but he hoped thereby to arouse the public judgment and conscience in furtherance of securing remedial legislation at the hands of the only power possessing it—that is, the Congress of the United States.

What other method is open to the people of our country for remedial legislation from fancied or real wrong than by a public discussion of our contentions through the press and upon the platform.

Some carping critics have said, "why not obey the terms of the injunction until the courts of last resort shall have rendered their decision?"

We answer that such a course was absolutely impossible. It would have perverted and suppressed the lawful proceedings of a convention of the American Federation of Labor, a lawful gathering and body. It would have conceded the surrender of the principles of freedom of speech and of the press. It would have deprived the men of labor of the right of calling the wrong to the attention of the people, aye, it would have prevented the men of labor even from making an appeal to Congress or from giving the grounds or furnishing the arguments upon which they base their claims for congressional relief. It must be remembered that the defendants, their friends, sympathizers, agents and attorneys were enjoined from mentioning directly or indirectly, in printing, in writing, or by word of mouth, the original grievance, the original contention, the injunction or anything in connection therewith.

* * * * *

429 We wish to call special attention to our exact position in relation to the charge of contempt. We hold that we can not be guilty of a violation of the injunction, because the injunction being in contravention of the constitution is therefore null and void. We could not very well violate an injunction which has no constitutional standing or existence. Hence, we can not be in contempt. It does not seem that it should be considered evidence of violation of the injunction to publish the fact that the injunction has been issued and to point out what it enjoins or prohibits.

To charge us with contempt because the American Federationist was delivered by mail to some distant points after the undertaking (which put the injunction in force) was filed is making the post-office an accessory.

The injunction became operative December 23, 1907, when the Buck's Stove and Range Company filed the bond required by the court. The January issue of the American Federationist was in the mails before that date. It will be clearly observed that we had no means of knowing when the required bond would be filed or that it would be filed at all. It is rather far-fetched to hold, because we mailed a magazine we had a right to mail that we become guilty of violation of the injunction because it was delivered after the injunction was in force, especially as we had no means of knowing when the injunction would become operative.

We had a right to disregard the injunction in those particulars of the right of free press and free speech, but we realized at all times that we did so at our peril—that is, the peril of being judged guilty of contempt and of receiving the most extreme sentence
430 which any judge might impose. All this has happened. We realized from the beginning that we might have to sacrifice our personal liberty in order to defend the liberties of the people of

our country. We have no complaint to make on personal grounds. We stand ready and willing to serve the sentence imposed if the higher courts shall so adjudge.

We have not asked, and will not ask, for clemency, and we hope our friends will not urge us to pursue such a course. Loving liberty as freemen do—as we do—it can not be difficult to appreciate what incarceration in a prison would mean to us. To ask pardon would render useless all the trial and sacrifice which our men of labor, and our friends in all walks of life have endured, that the rights and the liberties of our people might be restored.

To ask for pardon would settle no principle involved, would restore no right, would protect no threatened liberty. Such a pardon would only leave the whole case in confusion, and it would have to be fought over again from the beginning.

* * * * *

More significant than even the pledges of personal devotion are the assurances from many sources that if we are immured behind the prison walls there stand others ready to carry on the struggle for justice and right—aye, even until all the prisons shall be filled.

We sincerely trust that our country may be spared a prolonged and bitter struggle for the preservation of the rights and liberties for which our patriotic forefathers fought; but should such a struggle be precipitated the responsibility will rest with those who attempted to abolish the right of free speech and free press—not with those who resisted the usurpation for humanity's sake.

The full significance of this decision of Justice Wright's should sink deep into the hearts and minds of our people. We believe that the people

* * * * *

431 The attempt to suppress constitutional liberty will not succeed in the long run. We will still have our Miltons with their appeals for liberty and our Garrisons and Phillips with their crusade for human freedom.

There will be more Patrick Henrys and Washingtons and Jeffersons and Lincolns, to carry forward the world-old human struggle for liberty. In all humility, yet if necessary, we shall be proud to tread in the footsteps of that long and splendid procession, winding down the ages of those who have suffered that the torch of human liberty might be passed from hand to hand and thus reach down not only to the people of our own time, but to the countless millions yet unborn.

Mr. Davenport offers in evidence Editorial by Samuel Gompers, page- 130, 131 and 132 of the February 1909 Federationist, as follows:

Editorial.

By Samuel Gompers.

Justice Wright's Denial of Free Speech and Free Press.

"We will speak out, we will be heard,
Though all earth's systems crack;
We will not bate a single word,
Nor take a letter back."

The Scene in Court.

Two days before Christmas—that is, on December 23, 1908—Samuel Gompers, John Mitchell, and Frank Morrison were sentenced to imprisonment for one year, nine months, and six months, respectively, by Justice Wright of the Supreme Court of the District of Columbia for contempt of court upon the charge that they violated the terms of the injunction issued by that court upon the petition of the Buck's Stove and Range Company of St. Louis. The scene for the culminating act of this judicial drama was set by order of the court. Justice Wright directed that three seats be placed side by side and directly facing him. The "culprits" were ordered to occupy them. It was at once apparent to all in the crowded court room, including the defendants, who were so deeply interested, that the flashing eyes, the twitching lips, and the contemptuous frown of Justice Wright but poorly concealed a volcano of surging, relentless hatred. The judge sat in silent attitude for fully a minute, riveting his fierce gaze upon the defendants. It was quite evident that the judge intended to make them quake or quail and to work himself up to the pitch to sound the defendants' condemnation. At last he found his voice. It came in low, quivering, yet incisive tones. As he progressed with the delivery of his decision his voice rose and fell. At times it was pitched to a high key, at others it was scarcely more than the moving of his lips with teeth set fast, hissing his bitter invective.

Read the decision of Justice Wright (published in another part of this issue of the *American Federationist*): read it carefully, read it aloud and employ all the arts and devices of the trained actor and the reader if one would have some conception of the "calm and judicial" temperament displayed by him in dealing with a grave case of the first importance.

432 So intemperate and vindictive a spirit was displayed by Justice Wright in his every word and tone that even newspapers not friendly to Labor felt obliged to apologize for his manner. The *New York Evening Post* spoke editorially of "the somewhat turbid rhetoric and occasional excess of heat in Judge Wright's opinion."

The *Outlook Magazine* said in commenting on Justice Wright's manner:

"His opinion illustrates quite as strikingly as any quotation he makes from Mr. Gompers' writings 'the furious way' and the 'turbulence' of spirit and of measures which he condemns in the accused

before him. And in the court-room, when the sentence was pronounced, the dignity of language was all manifested by the supposed criminals, and the passion by the Judge."

For fully two hours and twenty minutes Justice Wright continued his arraignment and denunciatory characterization of Mitchell, Morrison, and Gompers; in all that time not a word, not a minor note of the life's work of the defendants to be helpful to their fellows for the common uplift. No; they would lead "the rabble," they would "unlaw" the land, they are public "enemies," their intent was to bring about a "relentless blight" of a "hideous pestilence," they would "smite the foundations of civil government," and would subordinate the "supremacy of law" to "anarchy and riot." They would have their "own furious way;" would have the view of "each distempered litigant imposed on the courts." The "frenzy of their disappointment." These and many other equally illuminating phrases graced the "judicially tempered" decision to which the defendants were perforce compelled to listen for more than two hours.

If the three men had been charged with brutal murder, with ravishment of the innocent, the scene could not have been more impressively set nor their characters more severely excoriated. No man or set of men convicted by a jury of the most heinous crimes known to man have ever been stigmatized or characterized by a judge in severer terms:

"Everywhere," said Justice Wright, "all over, within the court and out, utter, rampant, insolent defiance is heralded and proclaimed; unrefined insult, coarse affront, vulgar indignity measures the litigants' conception of the tribunal's due, wherein his cause still pends."

Imagine the feelings of Mitchell, Morrison, and Gompers during this tirade of judicial abuse and misrepresentation. Reference has been made to the dramatic character of the court procedure. It was tragic and yet in some respects it was a farce. It is not here necessary to dwell upon the more serious aspects of the situation, but a word as to the farcical phases may not be uninteresting.

When Justice Wright concluded his review of the case upon which his decision was based, he commanded the defendants to "stand up" and asked them if they had anything to say as to why sentence should not be pronounced upon them.

Gompers, Mitchell, and Morrison arose, and each in turn addressed the court. (Their remarks appear elsewhere in this issue of 433 the American Federationist.) Then with "great solemnity" Justice Wright expressed his "regret." He said:

Imprisonment the Penalty.

"I regret to have heard nothing save that which amounts to a distinct affirmation of the position which has already been answered by the court's opinion—that unreadiness to abide by the course of the tribunals which are ordained by the supreme law of the land.

"It is the judgment of the court that you, Frank Morrison, be imprisoned in the jail of the District of Columbia, for a term of six months; you, John Mitchell, for a term of nine months; you, Samuel Gompers, for a term of twelve months."

Now anyone would suppose that the regret of Justice Wright was the genuine expression of his mind; that he was open to some sort of modification of sentence dependent upon what the "guilty men" would say. But the following will throw some light on the hollowness and pretense of the formality as well as of his expressed regret. The sentence of twelve, nine and six months' imprisonment upon Gompers, Mitchell, and Morrison was imposed exactly 12.40 o'clock noon. More than an hour before that time the newspapers of Washington, D. C., issued bulletins announcing the convictions and sentences; more than an hour before the defendants were asked if they had anything to say why sentence should not be pronounced upon them, the New York City afternoon papers and others throughout the country issued extra editions containing the decision and the sentences imposed upon each man. For fully an hour before, probably the only persons who were ignorant of what the sentences would be, were Mitchell, Morrison, and Gompers.

With these events seething in their minds, the three "condemned men, the men so recently honored and chosen by the hosts of Labor to faithfully carry forward the great uplift work of common humanity intuitively turned toward each other, grasped each other's hand and in silence pledged anew their plighted faith.

"For the cause that lacks assistance
For the wrongs that need resistance
For the future in the distance
For the good that they can do."

Smarting under the indignities heaped upon them, feeling the great wrong done to all Labor, to all the people, as well as to them, yet there was not and is not a particle of rancor or bitterness in their hearts or minds. In the then Yuletide, Gompers, Morrison, and Mitchell faced the world with good will toward all mankind.

434 To the foregoing offers Mr. Ralston objected as incompetent and irrelevant, and as happening, if at all, long after the events complained of in the charges, and therefore not receivable in evidence, and furthermore that the respondents are not connected with it.

Mr. Davenport offered in evidence from the November 1908 Federationist, extracts found on pages 941, 942, 943 and 945, as follows:

Mr. Gompers and His Two Million Men.

"By James Creelman."

* * * * *

Two millions of organized workingmen speak through Samuel Gompers, president of the American Federation of Labor.

This vast organization includes 118 national and international unions, divided up into about twenty-seven thousand local unions.

These organizations have spent more than \$100,000,000 in a little more than a quarter of a century and have on hand now in their treasuries an aggregate of perhaps \$20,000,000.

There are about a million workingmen organized in the six great railway brotherhoods. These are not members of the American Federation of Labor, but they are equally opposed to limitations of the right to strike or boycott and equally insistent that the writ of injunction shall not be used as a mere strike-breaking weapon.

* * * * *

Samuel Gompers was born in London 58 years ago and came to America at the age of 13 years, having already worked at that tender age for two years by his father's side in a cigar factory. His grandfather was a calico printer in Holland. His father was a poor man with a large family, and all had to struggle to live.

Yet the boy who toiled for years in a factory before his milk teeth were shed was in time to lead and speak for 2,000,000 organized toilers, lecture in Harvard, Cornell, Michigan, Wisconsin and other universities, discuss industrial war and peace with the greatest corporations in the world, parley with and advise the President of the United States, the governors of states and the leaders of Congress, serve as vice-president of the National Civic Federation, win victory after victory for organized labor and crushingly repel the attempts of socialism to capture and pervert the main body of trades unionism.

* * * * *

435 The nine black-robed judges against whose decrees presidents, congresses and states are powerless had ceased their labors for the summer, and the national legislators had dispersed from Washington when I called upon Mr. Gompers at the headquarters of the American Federation of Labor.

It is a plain substantial Washington building with rows of elms and sycamores stretching along the street in front of it. Here the main plans of organized labor are worked out. Each trade organization is supreme in its own field. The Federation is simply a national organization that serves the whole.

Mr. Gompers sat at a great flat topped desk, piled with books and papers. The walls were covered with pictures of labor leaders in all parts of the country; medals and diplomas won by the Federation in public expositions; and a copy of the Declaration of Independence was hung in a conspicuous place. Through a window could be seen the trailing green of a grape arbor next door.

The master of the scene wore a square black silk cap and a black alpaca jacket. He had passed the previous day in a national conference of labor leaders called to consider what should be done to restore to organized labor the powers stricken from its hands by the decision of the Supreme Court of the United States in the Danbury Hatters' case.

He was pale, and there were dark shadows under his eyes. Yet his hazel eyes glowed with enthusiasm. He was jovial, almost merry.

For all the quiet of that room, the distant clicking of batteries of typewriters was eloquent of messages to all parts of the continent from the central conclave. Organized labor had decided to go into national politics to win its rights.

* * * * *

The big, flat desk beside which the black-capped, shaven and spectacled leader of 2,000,000 of American workmen walked was piled with hundreds of magazines and newspapers owned and published by the trades unions of the American Federation of Labor, some of them periodicals of distinguished typographical beauty and containing important and timely articles dealing with practical industrial questions.

436 To the foregoing offer Mr. Ralston objected as incompetent and irrelevant to any of the issues raised by the charges in the case, as not being the utterance or purporting to be the utterance of the defendants or of any of them, as not bearing any relation whatever to the matters under consideration at this time, and as being, in so far as the offer has been made at all, a mangled series of mutilated extracts from a very long article.

Mr. Davenport offered in evidence the financial statements in all numbers of the American Federationist from January 1, 1908, down to and including December 1909, making the following statement as to the effect of his offer.

"The March 1908, Federationist contains the financial statement for January 1908. On page 237 Mr. Morrison declares that he paid to the Post Office Department for postage on the American Federationist, \$17.93, and, under the date January 31st, that he paid for hauling the American Federationist, \$1.75.

"The American Federationist for April 1908, contains the financial statement for February 1908. At page 348 it is stated that on February 12, 1908, Mr. Morrison paid the Law Reporter Company, for printing the January 1908, Federationist, \$646.43, and, on page 318, that he paid for printing the February, 1908, Federationist, \$546.81. At page 319 it is stated that on February 28th, he paid for hauling it, to J. W. Bernhard, 50 cents, and that on February 29 he paid, for postage on the Federationist, \$13.99.

The May, 1908, Federationist contains the financial statement for March, 1908. At page 415 Mr. Morrison declares that 437 he paid, for printing the March Federationist, \$761.99, that on the 31st he paid, for hauling the same, \$1.25, and for postage, \$20.29.

"The June, 1908, Federationist contains the financial statement for April, 1908. At page 495 it is stated that on April 30th he paid, for printing the April Federationist, \$621.39; postage on the same, \$48.62; and for hauling it, \$2.55.

"The July, 1908, Federationist contains the financial statement for May, 1908. At page 566, Mr. Morrison states that he paid, for postage on the American Federationist, \$27.35, and that on May 29th he paid, for hauling it, \$1.90.

"Your Honor will bear in mind that we charge that Mr. Morrison distributed these things, and he has denied under oath in his plea, as I understand it, that he did so.

"The American Federationist for August, 1908, contains the financial statement for June, 1908. At page 651 it shows that on June 25 he paid, for printing the May Federationist, \$778.64; that

on the same date he paid, for printing the June Federationist, \$579.59; and that on June 6, he paid, for hauling the American Federationist, \$1.85.

"The September, 1908, Federationist contains the financial statement for July. On page 782 it shows that on July 28, he paid for hauling the American Federationist, 75 cents, and on July 31st, for postage \$5.14.

The October, 1908, Federationist contains the financial statement for August, 1908. At page 915, Mr. Morrison states 438 that he paid, for printing the July Federationist, \$822.08; that on August 8th he paid, for printing the August Federationist, \$624.48; that on August 27 he paid, for hauling the Federationist, \$2.95; and that on August 31st, he paid, for postage, \$48.08.

"The November, 1908, Federationist contains the financial statement for September, 1908. At page 1014 it shows that on September 30 he paid, for printing the September Federationist, \$1,202.39, for hauling, \$3.45, and for postage, \$28.44.

"There are statements of similar effect consolidated in Mr. Gompers' report to the convention of 1908, at page 61, showing the amounts received for the American Federationist and the amounts disbursed by him during the fiscal year ending September 30, 1908."

To the foregoing offer Mr. Ralston objected, if intended as evidence, as improper; if intended as argument untimely, and at all events, on any hypothesis, the objections made to the offer of the statements are renewed as to Mr. Davenport's statement, the objections being to their competency and relevancy.

Mr. Davenport thereupon called attention to the following extracts from the financial statement of the June, 1908, Federationist.

"On April 16, 1908, 20,000 four-cent stamps, Post Office Department	\$800.00
"April 17, 20,000 six-cent stamps, Post Office Department	1,200.00
"April 21, 20,000 four-cent stamps, Post Office Department	80.00
"April 22, 1,000 four-cent stamps.....	40.00
"April 22, 2,000 ten-cent stamps.....	200.00
"April 23, 1,200 four-cent stamps.....	48.00
"Making a total of.....	\$2,368.00

for stamps for that week."

439 "In the same statement, it appears that on April 24 he paid to fifty-three different persons who are named sums aggregating \$778.23, for writing, stamping, filling and mailing 3,025,000 circulars, entitled "In re."

"It appears, further, that on April 25 he paid to D. L. Rice, receiver of the Interstate Engraving & Printing Company, for

printing 1,500,000 circulars, \$1,100, and for engraving the same, \$74.11, making a total of \$1,174.11.

"On April 29 he paid the Globe Printing Company, for printing, 1,500,000 circulars, \$1,100, and for engraving the same, \$62.20, making a total of \$1,162.20.

"On April 27 he paid to J. W. Bernhard, for hauling circulars, \$28.55.

"Making a total disbursed of \$5,541.09 for stamps, the circulars, and for addressing, stamping, writing, filling and hauling them.

"It further appears in the same statement that on April 9 he paid, for 20,000 copies of the speech of Hon. William Sulzer, \$172.75; that he paid, for 20,000 copies of Senate Document 400, \$85.60; making a grand total of \$5,769.44."

The foregoing statement by Mr. Davenport was objected to by Mr. Ralston as incompetent for the reason that it contains a great variety of assumptions of facts which are not sustained by any evidence; that the theory upon which it was offered, certainly in a large decree, was intended to be responsible to some real or imaginary defense to be set up at some time in the future by the respondents in this case, and furthermore, that it is incompetent and irrelevant.

440 IRWIN H. LINTON being first duly sworn (page 629) testified, in substance, as follows:

That he weighed a copy of the January, 1908, Federationist, and found its weight to be six ounces, and had also weighed the printed report of the proceedings of the 27th Annual Convention of the American Federation of Labor, held at Norfolk, Virginia, November 11 to 23, 1907, and found its weight to be 14 1/2 ounces.

Mr. Davenport offered in evidence and read from page 44 of the proceedings of the A. F. of L., held at Denver, November 9-21, 1908, part of the report of Mr. Frank Morrison, Secretary, as follows:

Appeal for Appropriations.

The following is a statement of the amount received from the appeal issued to local unions requesting appropriations, to be used for the legal defense of the officers and members of the American Federation of Labor in the injunction suit of the Buck Stove and Range Company, and also an itemized statement of the moneys paid out of that fund, up to and including September 30, 1908:

Receipts.

Receipts\$11,822.26

Expenses.

Printing:

3,000,000 circulars, and electrotyping.....	\$2,336.31
Address to Workers, resolutions, etc.....	93.25
25,000 appeals for contributions, printed matter for legislative work	107.50
21-2477a	

26,300 envelopes for resolutions and letters.....	150.78
10,000 4-page folders and 500 1-cent envelopes....	45.75
Clerk hire, addressing, folding and filling.....	778.23
Postage	2,368.00
30,000 Sulzer speeches containing President Gompers' editorial on Supreme Court Decision in Hatters' case.	172.75
Salaries and expenses legislative committee:	
M. Grant Hamilton	500.00
Jacob Tazelaar	450.00
J. D. Pierce	450.00
J. E. Roach	350.00
E. N. Nockels	306.75
Cal. Wyatt	200.00
C. P. Connolly, St. Louis, Mo., distributing resolutions	11.75
Hauling mail matter	28.55
Room rent for extra clerks.....	50.00
Janitor service	15.00
Refunds	1.00
Total	\$8,415.62

Recapitulation.

Receipts	\$11,822.26
Expenses	8,415.62
Balance in fund October 1, 1908.....	\$3,406.64

To the foregoing offer Mr. Ralston objected as incompetent and irrelevant to the issues in this case.

441 Mr. Davenport offered in evidence from the proceedings of the Convention of 1908, page 31, part of the report of Samuel Gompers, President, reading as follows:

Injunctions continued to be issued in constantly more aggravated form, until the injunction was issued by Justice Gould, December 18, 1907, against the more than two million members of the organizations of the American Federation of Labor, as well as against the Executive Council. Free speech and free press were denied and then followed the Supreme Court decision in the Danbury Hatters' case, classing our unions as trusts, corporations, monopolies, conspiracies and combinations in illegal restraint of trade, with all the liabilities of three-fold damages, fines of \$5,000, and imprisonment for a year.

When the events recorded, and others too numerous to mention, transpired, they developed and culminated into an acute state of feeling among the workers of the country. The right of exercising the peaceful, normal, and natural activities of the workers was outlawed, the very existence of our united efforts imperilled, constitutional rights of free speech and free press were invaded and denied, and the hostile frame of mind of Congress clearly emphasized.

At this time came demands from our fellow workers all over the country in the form of resolutions and otherwise, all of them urging that a definite course be pursued by our Federation relative to the new conditions which had arisen.

The adverse decisions and injunctions of courts and the hostility of Congress created an unsettled and anxious state of mind among our fellow workers throughout the country. A number of central bodies adopted resolutions demanding that the Executive Council call a mass convention to take political action in some form or other, and declaring that in the event that this was not done by a specific date, they would themselves inaugurate such a movement. The greater number, however, expressed their devotion to our movement by declaring themselves willing to follow whatever course upon which the Executive Council of the American Federation of Labor might decide.

It was in consideration of this situation that a meeting of the Executive Council was called at Washington, beginning March 16. Upon the authority of my colleagues an invitation was extended to the responsible officers of the international unions to participate in a conference at Washington, March 18, 1908.

It was there and then that the Protest Conference, together with the Executive Council, formulated and presented the "Protest to Congress," and it is my earnest hope that you will again read that historic document in connection herewith. It sets forth clearly the grounds of our complaint and the basis of our protest.

And from page 33 of the same report as follows:

The Protest Conference urged the workers of the country to hold meetings and to pass resolutions expressive of their purpose, demanding legislation at the hands of Congress before it adjourned, and declaring for the alternative course adopted as governing the course of the participants in the conference if it met their approval. The mass meetings were held by workers in factory, workshop, mill, mine, farm, or field. The indorsement and approval of the measures recommended by the Protest Conference were practically unanimous.

Desirous of pressing Labor's demands home upon the majority in control in Congress, five additional organizers were called in from the field of their other activities, and added to the two already at Washington to act as Labor's Legislative Committee. They made the most strenuous efforts, and it is doubtful if a single member of Congress in attendance escaped being interviewed as to his willingness to work and vote for the legislation essential to the workers. With members of the Executive Council our Legislative Committee appeared before the Congressional Committees to argue our cause and present our claims, but all to no avail.

And from page 34 of the same report as follows:

There have been printed and distributed several millions of copies of "Labor's Protest to Congress" and "Address to Workers," and "The Essence of Labor's Contention on Injunctions." In the discussion of the wide scope of the Supreme Court's decision in the *Hatters'* case thousands of extra copies and a special edition of the

American Federationist were published, and hundreds of thousands of circulars by the Executive Council, the Labor Representation Committee and myself. Besides this, an extraordinarily large number of letters were written in answer to inquiries based upon Labor's claims. The candidates for President, as well as those for Congress and other offices, have each and all of them discussed the principles and claims of Labor as the most important issue of the campaign. Never before have the people manifested so keen a desire to know the claims which Labor presents and to learn if they are founded upon justice and a patriotic and humane purpose to help all our people. These letters, publications and addresses have afforded us the opportunity to place intelligently and fairly before the American people the merits and earnest motives and the high aspiration of the ennobling cause of Labor.

442 To the foregoing offer Mr. Ralston objected as incompetent and irrelevant, and immaterial to any of the issues in this case.

Mr. Davenport offered in evidence from the April, 1908, Federationist, page 262, the following:

"By the wrongful application of the injunction by the lower courts the workers have been forbidden the right of free press and free speech and the Supreme Court in the Hatters' case, while not directly prohibiting the exercise of these rights, yet so applies the Sherman Law to labor that acts involving the use of free press and free speech, and hitherto assumed to be lawful, now become evidence upon which triple damages may be collected and fine and imprisonment added as a part of the penalty."

To the foregoing offer Mr. Ralston objected to as incompetent and irrelevant, as it appears to have been published after the date of any of the events complained of in the Committee's report.

Mr. Davenport offered in evidence from the April, 1908, Federationist, page 268, reading from the "Address to Workers," as follows:

"Hold mass meetings in every city and town in the United States on the evening of the third Sunday or Monday in April (19th of 20th) and at that meeting voice fully and unmistakably labor's protest against the Supreme Court decision which strips labor of the rights and liberties which we had supposed were guaranteed by the constitution."

Mr. Ralston made the same objection to the competency, relevancy and materiality of the offer, and also that the date of the publication had not been proven to be within the time complained of.

Mr. Davenport offered in evidence a statement (page 637) from the May, 1908, Federationist, page 390, entitled "Labor's Mass Meetings," as follows:

443 At your meeting let there be no mincing of words, and let the views of labor and labor's friends and the resolutions which your meeting may adopt, ring clear and emphatic; that the workers will not flinch, but manfully stand out for their rights, and that the workers and their friends throughout the entire country shall pledge themselves without regard to party affiliation, without

any divergence of opinion, — make one common stand and effort, unmasking the open or hypocritical opponent and sending to political oblivion those who, by negligence or antagonism, fail to respond affirmatively and give their full support to the specific measures which labor, in the name of all our people, presents to them for their consideration and action.

Convey to the assembled hosts, if you can, my earnest wish that I could be with them, and for the triumph in the cause of justice and right.

Mr. Ralston objected to the offer as not being in any wise referred to in the charges in the cause, and because the matter presented appeared to have been published long after the order said to have been violated had expired, and in addition, because it had not been properly proven.

Mr. Davenport offered in evidence from the September, 1908, Federationist, page 688, speech said to have been made by Mr. Gompers in New York on April 19th, reading as follows:

"They tell us that we must not boycott. Well, if the boycott is illegal, we won't boycott. But I have no knowledge that any law has been passed or any order issued by any court compelling us to buy, for instance, a range or a stove from the Buck's Stove and Range Company. You know that myself and several others are enjoined from telling you, and we are not prepared to tell you, that the Buck's Stove and Range Company is unfair. There are a number of men who have been having suit brought against them for two hundred and forty thousand dollars. That is not very much, between you and me; but a few hatters in Danbury, Connecticut, are being sued for saying that Loewe and Company, hat manufacturers, of Danbury, Connecticut, are unfair. I am not prepared to say that that is in violation—that they are unfair.

"Of course, in the case of the Buck's Stove and Range Company, if I told you that the Buck's Stove and Range Company was still unfair, when I got back to Washington tomorrow, or some place where they say people play checkers with their noses—well, as I say, I am not prepared to tell you that these things are unfair. But there is no law, no court decision that compels you to buy them, nor does any law compel you to buy anything without the union label.

"But boycotting, I think—I am sure that the term itself has been coined within my lifetime. Boycotting, in its essence and effect and practice, has been in vogue since man began. I do not care what conception you may have of the beginning of human existence. I still assert that the word 'boycott' had its origin from the beginning of man's life. Of course, it was not known as the boycott. The term 'boycott' originated in Ireland about twenty-five years ago, when the people of the Green Isle were up in protest against British mis-rule, and they adopted a plan against a certain agent for one of the land owners. This agent was known by the name of Captain Boycott. They did not say that they were going to boycott him, but they simply said, in the language of the time, that they were going to send — to Coventry. Coventry was not an

attractive country place, so that after the action had been
444 accomplished in regard to this gentleman, the term, instead
of sending any one to Coventry, was changed to boycotting
him; in other words, it was either an implied understanding or
an express declaration that the people would have no dealings with
him insofar as it was possible. And then came the word 'boycott,'
and it has come into our dictionaries and into our lexigraphs, as
well as into our court decisions. Now, my friends, I do not think
that what is human to do, what it is human and humane to do, can
be by any species of misinterpretation expected to be an illegal
or improper act. You can not make me buy anything I do not
want to buy. I can tell my friends to do likewise, and they have
a right to do what I have a lawful right to do and I have a legal
right to tell them to do. No man has a vested right in my patron-
age. I have a right to bestow; I have a right to withhold and trans-
fer it to anyone else, and I want to say this about that, injunction
or no injunction, I won't buy a Loewe hat nor a Buck's stove or
range."

To the foregoing offer Mr. Ralston objected as incompetent and
irrelevant, and not the proper way of proving the fact attempted
to be proven thereby.

Mr. Davenport offered in evidence from the American Federa-
tionist for September, 1908, page 688, statement said to have been
made by Samuel Gompers, on May 1, 1908, at Chicago, Illinois.

"I might say just parenthetically about the hatters' case that you
are not permitted to boycott the Loewe hats; but I want to call
your attention to the fact that there is no law compelling you to
wear a Loewe hat, nor has any judge issued a mandamus compel-
ling you to buy a Loewe hat. That applies equally to Mr. Van
Cleave's stoves and ranges. And, by the way, I don't know why
you should buy any of that sort of stuff. I won't; but that is a
matter to which we can refer more particularly in our organiza-
tions."

The foregoing offer was objected to as incompetent and irrelevant,
and occurring long after the expiration of the injunction, the vio-
lation of which is complained of, and as not the best or proper
proof of the alleged speech referred to.

Mr. Davenport offered in evidence from volume 42, pages 3325
to 4032 of the Congressional Record, 1908, commencing at

445 the bottom of the first column on page 3479, as follows:

"Mr. BOWERS: I yield to the gentleman from New York
(Mr. Sulzer) such time as he may desire.

"Mr. SULZER: Mr. Chairman: The recent decision of the United
States Supreme Court in the case of the United Hatters of North
America is of far-reaching importance and affects every work-
ingman in our country. That decision practically holds that a
labor organization is a trust and subject to the provisions of the
so-called "antitrust law." I do not think this was the intention of
Congress when the act was passed; but be that as it may my judg-
ment is that this decision should be given the widest possible pub-
licity, with the comments of the leaders of organized labor, to the end

that all may know. So Mr. Chairman, I send to the Clerk's desk and ask to have read in my time a very able and exhaustive and lucid commentary on the decision by President Samuel Gompers, an editorial by him in the *American Federationist*, and the decision itself.

The CHAIRMAN: The Clerk will read.

The Clerk read as follows:

[Editorial from American Federationist, by Samuel Gompers.]

Labor Organizations Must Not Be Outlawed—the Supreme Court's Decision in the Hatters' Case.

On February 3, 1908, the Supreme Court issued the most drastic and far-reaching decision which it has ever handed down. This decision directly affects all labor and hence the whole people. The case was that of the Loewe Company against The United Hatters of North America. The court invokes the Sherman antitrust law and under it decides that the Hatters are liable in damages according to the complaint of the Loewe Company. This action was first brought in the United States circuit court in the district of Connecticut under section 7 of the Sherman antitrust law. The lower court sustained the contention of the Hatters that they were not liable under the Sherman law.

The Loewe Company then carried the case by writ of error to the circuit court of appeals. The circuit court, desiring the instruction of the Supreme Court on the writ of error, put the question thus:

"Upon this state of facts can the plaintiffs (Loewe & Co.) maintain an action against the defendants (Hatters) under section 7 of the Sherman antitrust law of July 2, 1890?"

446 The plaintiffs and defendants then joined in the application to the Supreme Court to require the whole record and cause to be sent up for its consideration. This application was granted.

The Supreme Court invoked not only section 7, but sections 1 and 2 of the Sherman antitrust act, and declared that: "In our opinion the combination described in the declaration (United Hatters) was a combination in restraint of trade or commerce among the several States in the sense in which those words are used in the act, and the action can be maintained accordingly."

The decree also states:

"And that conclusion rests on many judgments of this court to the effect that the act (Sherman antitrust) prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, or restricts in that regard the liberty of a trader to engage in business.

"The combination charged (boycott by Hatters) falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination (Hatters) imposes."

The sections of the Sherman antitrust law upon which the decision is based are as follows:

"SECTION 1. Every contract, combination, in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

"SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of trade or commerce among the several States or with foreign nations shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court."

"SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of suit, including a reasonable attorney's fee."

We publish elsewhere in this issue the Supreme Court decision in full. The court attached the complaint of the plaintiffs in the margin of the decision, and it also quotes from their complaint in the body of the decision.

No more sweeping, far-reaching, and important decision has ever been issued by the Supreme Court. The Dred Scott decision did not approach this in scope and importance, for it only decreed that any runaway slave could be pursued if he made his escape into a free State and his return compelled by all the powers of the Government, to his owner to a slave State. Any person who assisted in the escape of a slave or who harbored him, could be prosecuted before the courts for a criminal offense. That decision involved the few negro slaves who could make good their escape from a slave-holding State. The civil war annulled the decision of the Supreme Court and freed the slaves. It cost the lives of hundreds of thousands of brave men on both sides and emancipated from chattel slavery 4,000,000 slaves. No man now proudly points to that famous Dred Scott Supreme Court decision.

The decision of the Supreme Court in the *Hatters* case involves every worker and every sympathizer with the ennobling work of the labor movement of our land. A study of this momentous decision reveals some strange peculiarities. Outside of the opening paragraphs quoted above, the decision has very little other than the citation of cases which are held to illustrate and support it. There are references to injunctions granted under the Sherman Antitrust Act and brief comment upon the citations, the decision gives an

outline of the complaint incorrect in many particulars, especially in its summary of boycott proceedings by the Hatters. It quotes directly and at great length from the complaint (Loewe & Co.). The decision concludes thus:

"And then follows the averments (in Loewe complaint) that the defendants (Hatters) proceeded to carry out their combination to restrain and destroy interstate trade and commerce between the plaintiffs and their customers in other States by employing the identical means contrived for that purpose, and that by reason of these acts plaintiffs were damaged in their business and property in some \$80,000.

"We think a case within the statute was set up and that the demurrer should have been overruled.

"Judgment (of lower court) reversed, and cause remanded with a direction to proceed accordingly."

Reference to the decision itself will show what precedents are quoted and what comments the court makes on them to show their alleged bearing on this case; but, in truth, not one of them in any degree parallels this case or sets any precedent that the layman can discover.

The Hatters' defense of the boycott, their explanation, and justification—for the boycott is admitted—appears nowhere in the decision.

As the complaint of the plaintiffs (the Loewe Company) is published in full with decision, it would seem only fair that the reply of the defendants (Hatters) should also have been reproduced.

As it is, the complaint of the plaintiffs is apparently taken by the court as a true and correct account of what happened, though it is in reality full of the most glaring inaccuracies and misstatements. We have not the space here to quote the complaint and point out its fallacies, but may do so in the future.

When the court quotes from the complaint it includes its errors.

Some of these we shall point out, for it is not right that what is destined to become so historic a decision should rest upon a faulty foundation of fact without protest:

448 The court, quoting from the plaintiff's complaint, directly, says that defendants were—

"engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business, to organize their workmen in the departments of making and finishing in each of their factories into an organization, to be part and parcel of the said combination known as the United Hatters of North America, or as the defendants and their confederates term it, unionize their shops, with the intent thereby to control the employment of labor in and the operation of said factories, and to subject the same to the direction and control of persons other than the owners of the same, in a manner extremely onerous and distasteful to such owners, and to carry out such scheme, effort, and purpose, by restraining and destroying the interstate trade and commerce of such manufacturers, by means of intimidation of and threats made to such manufacturers and their customers in the

several States, of boycotting them, their product, and their customers, using therefor all the powerful means at their command as aforesaid until such time as, from the damage and loss of business resulting therefrom, the said manufacturers should yield to the said demand to unionize their factories."

The Hatters had union agreements with seventy out of eighty-two manufacturers in the country. The Supreme Court says of this:

"That the conspiracy or combination was so far progressed that out of eighty-two manufacturers of this country engaged in the production of fur hats, seventy had accepted the terms and acceded to the demand that the shop should be conducted in accordance, so far as conditions of employment were concerned, with the will of the American Federation of Labor; that the local union demanded of plaintiffs that they should unionize their shop under the peril of being boycotted by this combination, which demand defendants declined to comply with; that thereupon the American Federation of Labor, acting through its official organ and through its organizers, declared a boycott.

The court takes the amazing view that even the very successful effort of the hatters' union to obtain and maintain industrial peace with employers is proof of unlawful conduct—that is, "conspiracy"—and under the Sherman antitrust law unlawful and punishable by being mulcted in damages and by fine and imprisonment.

As a matter of fact, neither the hatters nor any other trade ever attempted to "force all manufacturers against their will" to make agreements with the union. Common sense teaches that a voluntary agreement between an employer and a union must be a peaceful one.

All union agreements with employers are voluntary and mutual.

No union could, if it tried, force an employer to enter into an agreement with it. No union attempts such unbusiness-like tactics. The most any union has done is to decline to buy the products of a firm which declined to employ union men and grant the prevailing rate of wages, hours of labor, and conditions of employment. Supposing that they were exercising their constitutional right of free speech, union men have asked their friends and fellow
449 unionists not to buy such goods. A word as to this custom may not be amiss here.

No manufacturer, no retailer, has any vested right in the purchasing power of an individual or of the community; no court can confer upon him that right. The patronage or purchasing of goods depends on the whim of those who buy. A purchaser may decline to buy certain goods, for the most absurd reason or no reason; yet the person who has those goods to sell has no resource by which he can force the purchaser to buy them.

In illustration of this, witness the stock of goods which accumulate in every line of retail business, nothing wrong with the goods except that the whim of a passing fashion has decreed them out of date and the purchaser looks for novelty, or, on the other hand, the purchaser may decline to buy the article in fashion and insist upon the indulgence of individual taste, thus greatly disappointing the retailer who would like to dispose of stock on hand. We digress

this much to show how completely the purchasing power is vested in inclination.

In the case in point the boycott by the hatters against the Loewe Company did not result in fewer hats being purchased by the community; therefore we can not see how there was any re-traint of trade. The boycott, if effective, merely diverted the purchasers to some other make of hats. The volume of trade was the same, though for certain reasons some manufacturers may have sold more hats than others. We fail to see that the hatters did anything more than ordinary business competitors do when they try to divert business to themselves from other competitors by advertising. The hatters tried to divert the hat business to the products of union labor. Since their boycott neither obstructed nor decreased the total volume of trade, we fail to see how their action could be "a conspiracy in restraint of trade and commerce."

The Supreme Court in its decision specifically charges that the American Federation of Labor acting through its official organ and through its organizers declared a boycott.

The Court's Error in Fact.

The court is in error. The American Federation of Labor never indorsed or declared a boycott against the Loewe Company. In fact, no request for such action in any manner or form was ever made to the American Federation of Labor or its officers either directly or indirectly by the hatters or anyone else. The Loewe Company was never published on the "We don't patronize" list of the American Federationist. We invite the inspection of the files of the American Federationist and of our office records in proof of this. We feel it our duty in the interest of truth and accuracy to call public attention to the error of the court in charging the American Federation of Labor with being a party to the action against the Loewe Company.

We can hardly believe that the Supreme Court itself realized the evil consequences which may follow this decision under its construction of the Sherman antitrust law, a construction never intended by Congress.

It may be like the falling pebble which dislodges the avalanche, bringing ruin and destruction upon all in its path. Should
450 this be the result, it will follow from the nature and operation of the decision itself, not because of the protest of those affected.

We regard the members of the Supreme Bench as upright and incorruptible. We believe that in any decision handed down each judge honestly and conscientiously gives the opinion which he believes to be correct. We do not agree with those who charge the court with being influenced by sinister motives or under the domination of corporate influence.

But, while expressing our confidence in the integrity of the Supreme Court, we must also say that, being human, we do not consider it infallible in its judgments. We must accept them be-

cause, under our form of government, the Supreme Court is the highest legal tribunal. Right or wrong, there is no appeal from its decision. It is true that this is the only country possessing such a tribunal, and it is a subject for serious speculation whether we might not do better under some other form of procedure; but such speculation is useless so far as the immediate future is concerned.

We are proud of the institutions of our country and try to uphold them with all our power, but we do protest against the assumption of lawmaking power by the courts. In assuming such functions they invade the sphere of the legislative and executive, which must necessarily result injuriously to the very fabric of our Republic. Such action by the courts not being contemplated by the Constitution, there are no safeguards, no checks, as to what may be attempted. This assumption of power, even under the guise of construing existing law, is none the less dangerous, for decision of the court then becomes a law without the people ever having had an opportunity to take any part in the making or rejecting of it.

We trust it will not be considered lese majeste if we say that in our opinion the Supreme Court in this and other recent decisions affecting labor tends to revert to mediæval procedure rather than make the application of legal principles to present the industrial situation. The conditions with all their complications are here and not of our making. Why should our highest tribunal ignore them and plunge the people into confusion and distress?

However, it is not so wonderful that the court takes this attitude.

The lifelong environment of the respected gentlemen who compose the Supreme Bench has been such that they have not been brought into personal contact with industrial problems. On the contrary, their associations have been largely with business and financial men and affairs. Naturally a man absorbs most of his point of view from his environment. It is quite understandable to us that justices of the Supreme Court should have little knowledge of modern industrial conditions and less sympathy with the efforts of the wage-workers to adapt themselves to the marvelous revolution which has taken place in industry in the past half century:

The language of the *Hatters'* decision makes it clear that the Supreme Court has not informed itself on modern economics. In its opinion the rights of hats seems to be greater than the rights of man. It seems to regard a hat as a sacred emblem of the rights of property; hence its protection is imperative. No effort, however, is made to protect the right of man to a fair return for his labor and the opportunity to labor under the prevailing conditions. In fact this decision goes to an unheard-of length in punishing the workers for the exercise of their rights.

We regret exceedingly that this is so. While again expressing our belief in the integrity of the court, we yet are convinced that it is the duty of this high tribunal to inform itself of the great principles underlying the economic conditions of our time. Were its members to do this, we believe they would perceive that a labor union can neither be a trust nor subject to trust laws. The decision refers to a book which seems to have suggested certain views,

We would suggest that the members of the court read the chapter entitled "Some equivocal rights of labor," from the book *Moral Overstrain*, by George W. Alger. It will disclose the difference between essential remedies to relieve wrongs and the academic (?) rights which avail the workers nothing. While the union is not specifically declared a trust under this application of the Sherman Act, yet the Supreme Court construes for the punishment of the unions a law which was only intended to apply to illegal trusts. The wording of the law permits the penalty to attach whether the union is considered a trust, "or otherwise," so we can take our choice as to the nomenclature, but the penalties apply in any case.

From the fact that labor unions are declared punishable under trust penalties we feel that we should again point out how widely different is a labor union from a trust—for upon these vital and fundamental differences of the two are based the main reasons for our protest.

Organized Labor Not a Trust.

The labor union is not a trust; none of its achievements in behalf of its members—and society at large—can properly be confounded with the pernicious and selfish activities of the illegal trust. A trust, even at its best, is an organization of the few to monopolize the production and control the distribution of a material product of some kind. The voluntary association of the workers for mutual benefit and assistance is essentially different. Even if they seek to control the disposition of their labor power, it must be remembered that the power to labor is not a material commodity.

There can not be a trust in something which is not yet produced.

The human power to produce is the antithesis of the material commodities which become the subject of trust control.

From its very nature the labor union can not be regarded as a trust; yet the Supreme Court seems not to have considered this vital distinction in arriving at its decision.

Public opinion is practically unanimous in recognizing the union as one of the most essential means of securing for the workman his rights, protecting him against injustice, and putting him in touch with all the best thought and most advanced movements of ethical forces of civilization.

The aims and purposes of our labor movement have often been stated before, but will bear brief restatement at this time.
452 when the attempt is being made in many directions to so cripple the activities of our unions that they may be shorn of their usefulness.

Our unions aim to improve the standard of life, to uproot ignorance, and foster education; to instill character, manhood, and independent spirit among our people; to bring about a recognition of the interdependence of man upon his fellow-man. We aim to establish a normal workday, to take the children from the factory and workshop and give them the opportunity of the school, the home, and the playground. In a word, our unions strive to lighten toil, educate their members, make their homes more cheerful, and in

every way contribute an earnest effort toward making life the better worth living. To achieve these praiseworthy ends we believe that all honorable and lawful means are both justifiable and commendable and should receive the sympathetic support of every right-thinking American.

If the workers are to be deprived of their opportunities for self-improvement and independence; if they are to be held at the will of the employer—and if this decision is enforced such might be the consequence—the industrial condition of our country would sink lower than that of slavery.

The slave owner was usually restrained from going to extremes in the treatment of his slaves by the fact that they represented property value to him, but if the industrial situation ensues indicated by this court decision, the wage-workers would be more under the control of the unscrupulous employer than was the slave under his owner.

We do not believe that the conscience and sense of justice of a large majority of employers will permit them to take advantage of the conditions possible under this decision. We believe that they and all good citizens will join with us in the earnest attempt to secure a remedy from Congress; but there is always the selfish, avaricious, conscienceless type of employer, and it gives us pause to think of the hardships and persecutions which such employers might inflict when their rapacity has the protection of a decree such as this recent one delivered by the Supreme Court.

At the time the Sherman antitrust law was passed we warned our members and the public that it was so drawn that we feared a construction would be read into it so as to apply it to our unions instead of to the trusts which it was intended to restrain.

The event which we feared has come to pass. The law has long been admitted to be of no value in restraining or really punishing trusts. Useless as an instrument of good, it has now been made an instrument of positive mischief, and perverted from its original intent.

We know the Sherman law was intended by Congress to punish illegal trusts and not the labor unions, for we had various conferences with Members of Congress while the Sherman Act was pending, and remember clearly that such a determination was stated again and again.

The judges of the Supreme Court should be aware of this, for the legislation has been enacted within their knowledge and memory. While not expecting infallibility on the part of the court, we do think it should acquire and act upon current information as to the intent of such an act as the Sherman antitrust law.

We would have supposed that the debates upon this subject in Congress would have had some weight in assisting judicial interpretation of application of the law. It apparently did, but in a most misleading way. In this decision the court says that some effort was made when the Sherman Act was pending in Congress to exclude organized labor and agricultural labor from its operation, but because such a clause was not made a specific part of the law the Supreme Court seems to find its justification for now applying it to organized labor.

Brief History of Sherman Act.

We believe that this view of the case is not supported by the facts in connection with the history of the Sherman antitrust law and the efforts made to amend it since its passage. We propose now to give this history at some length by quoting from the Congressional Record.

The antitrust bill was presented to the consideration of the Senate on February 28, 1890. The text of the bill contained but three sections in strict reference to corporation business. The bill was brought up from time to time by Senator Sherman, and it was just as often laid aside by other Senators. A substitute for the bill was introduced by the Committee on Finance on March 22, 1890, and on March 25 it was moved by Senator Morgan to commit the bill to the Judiciary Committee. His motion failed at that time on a vote of 16 yeas, 28 nays. The discussion of the bill continued as it was reported by the Finance Committee, and on the same day Senator Sherman offered a proviso at the end of the first section of the bill reported by the Committee on Finance. He said: "I take this proviso from the amendment proposed by the Senator from Mississippi, Mr. George. I do not think it necessary, but at the same time, to avoid any confusion, I submit it to come in at the end of the first section."

Thus showing that Senator Sherman believed that the bill without the amendment excluded the laboring and agricultural organizations from the operation of the act. Indeed, in conference, he so expressed himself to the writer.

Amendment: Provided, That this act shall not be construed to apply to any arrangements, agreements, or combinations between the laborers, made with a view of lessening the number of hours of labor or the increasing of their wages; nor to any arrangements, agreements, or combinations among persons engaged in horticulture or agriculture, made with a view of enhancing the price of agricultural or horticultural products."

Some discussion was had upon this amendment by Senators Plumb, Sherman, Ingalls, Teller, Turpie, and Blair, and the word "their" was added between the words "of" and "own," in the last line of the amendment, so as to make it read "the price of their own agricultural or horticultural products," and with this single addition the amendment was agreed to.

Discussions continued, and on the following day, March 26, Senator Stewart, of Nevada, said:

"The original bill has been very much improved, and one of the great objections has been removed from it by the amendment offered by Senator Sherman, which relieves the class of persons who would have been first prosecuted under the original bill without the amendment. I am very much gratified that the Senator offered the

amendment and that the Senate adopted it. The bill ought
454 now, in some respects, to be satisfactory to every person who
is opposed to the oppression of labor and desires to see it
properly rewarded."

This amendment to the act was made while the Senate was sitting in Committee of the Whole.

The Senate resumed consideration of the bill on March 27, and when the amendment just referred to was reached, Senator Sherman rose and said: "That is an amendment offered by the Senator from Rhode Island [Mr. Aldrich], and I call the attention of the Senate to it. In my judgment this amendment practically fritters away the substantial elements of this bill." Senator Blair corrected Senator Sherman and told him that the amendment referred to was one offered by himself and not by the Senator from Rhode Island.

A discussion followed, in which Senator Edmunds, of Vermont, participated. He opposed the amendment, but in the course of his remarks said:

"Well, here we are! I do not blame the farmers of the United States at all. On the contrary, I support them when everybody is turned against their interests in organizing themselves to defend them. But if capital and manufacturing industries begin to regulate, to repress, and diminish below what it ought to be the price of all labor everywhere that is engaged in that kind of business, labor must organize to defend itself."

Senator Hoar, of Massachusetts, followed Senator Edmunds in the discussion upon this amendment as it offered to protect labor.

"I wish to state in one single sentence my opinion in regard to this particular provision. The Senator from Vermont thinks that the applying to laborers in this respect a principle which was not applied to persons engaged in the large commercial transactions which are chiefly affected by this bill was indefensible in principle. Now, it seems to me that there is a very broad distinction, which, if borne in mind, will warrant not only this exception to the provisions of the bill, but a great deal of other legislation which we enact or attempt to enact relating to the matter of labor. When you are providing to regulate the transactions of men who are making corners in wheat, iron, and other products, speculating or when they are lawfully dealing with them without speculation, you are aiming at a mere commercial transaction, the beginning and the end of which is the making of money for the parties and nothing else. That is the only relation that transaction has to the state, but is the creation or division of much of the ownership of the wealth of the community, but when the laborer is trying to raise his wages, or is endeavoring to shorten the hours of his labor, he is dealing with something that touches closely, more closely than anything else, the government and the character of the state itself. The laborer who is engaged lawfully and usefully and accomplishes his purpose, in whole or in part, endeavoring to raise the standard of wages is engaged in the occupation the success of which makes republican government itself possible, and without which the republic can not, in substance, however it may in form, continue to exist.

"I hold, therefore, that as legislators we may constitutionally, properly, and wisely allow laborers to make associations, combinations, contracts, agreements for the sake of maintaining in advance

455 their wages, in regard to which, as a rule, their contracts are to be made with large corporations who are themselves but an association or combination of capital on the other side. When we are promoting and even encouraging that, we are promoting and encouraging what is not only lawful, wise, and profitable, but absolutely essential to the existence of the Commonwealth itself."

Further discussion followed, and Senator Walthall, of Mississippi, moved to refer the bill and the amendment to the Committee on the Judiciary, with instructions to report within twenty days, which carried by a vote of 31 yeas, 28 nays.

On April 2 the bill was reported out by the Committee on the Judiciary, but the amendment agreed to in Committee of the Whole was not included.

Though at the time we doubted the wisdom of that amendment being omitted, we were assured by several that under the reconstructed bill labor and agricultural organizations were not included.

On April 8 the bill passed the Senate as reported by the Committee on the Judiciary by a vote of 52 yeas, 1 nay. It passed the House on June 21, 1890, and was approved July 2, 1890.

In the Fifty-sixth Congress a bill was introduced known as H. R. 10539, intended to amend the Sherman antitrust law. During its consideration by the House Committee on the Judiciary, representatives of the American Federation of Labor requested the adoption of the following amendment:

"Nothing in this act shall be so construed as to apply to trade unions or other labor organizations organized for the purpose of regulating wages, hours of labor, or other conditions under which labor is to be performed."

The committee declined to accept this amendment; but when the bill was reported to the House, Representative Terry made the motion to adopt the amendment, which was agreed to, and the bill as amended passed the House by a vote of 259 yeas and 9 nays.

The bill then went to the Senate, but no action was taken; therefore it died on the expiration of that Congress.

Yet no one will pretend to say that both these quoted provisions excluding labor from the operation of the law were not the expression of the separate judgment of the Senate and of the House of Representatives, though not jointly enacted.

Does not this brief review of the history of legislation upon the subject of the Sherman Act clearly indicate what Congress had in mind when it enacted this legislation? And yet the Supreme Court assumes that, because both Houses did not jointly adopt a specific provision excluding the labor organizations from the operations of the antitrust laws, therefore they were included.

We must protest against the penalizing of the labor unions under the carelessly worded provisions of an antitrust law, which we understand since the court's decision has resulted in the grand jury of New Orleans indicting seventy-two workmen under its provisions, while at the same time the most vicious and rapacious trusts flourish and wax great upon the "restraint of trade and commerce" which they

are able to exert, yet not all the machinery of our Government or of courts seems adequate to bring these real trust offenders to the place where the Sherman antitrust law really applies to them. 456 In the confusion caused by this misapplication of the Sherman law to the labor unions, the illegal and vicious trusts are likely to still further escape punishment. Thus they may profit by the injustice done to labor.

The trend of legislation in civilized countries, including our own has been to remove the associated efforts of the wage-earners for their mutual and common protection from the ban of conspiracy or the implication that they are in unlawful restraint of trade. As a matter of fact, and laws have been passed by other countries and in our own specifically declaring that the organizations of workmen instituted for the purpose of regulating hours of labor and other conditions of employment and increasing wages were not to be held as conspiracies or organizations in restraint of trade.

Congressional Relief Imperative.

We expect that the present Congress will take prompt action to so amend or modify the Sherman law that there can be no question as to its application. We shall ask such enactment restoring the rights of unions and agricultural associations, so that the association of human beings for education and progress may never again be confounded with the sordid and material activities of trusts. We believe that the people as a whole will be with us in this effort.

And even should Congress grant the desired relief in this case we shall still advise the utmost political activity on the part of our workers and friends. This decision has shown us the necessity of eternal vigilance.

It is well that Congress is in session at the time this decision is handed down, for we can now make our appeal directly to it for relief. We confidently expect that Congress will appreciate the injustice which has been done directly to the workers and hence indirectly to all the people. We believe that Congress will understand how important a portion of the body politic is comprised by the workers and will grant us the attention and prompt action which the injury merits. Congress must of necessity declare itself either for or against us at this time, and should it fail to heed our request for justice we shall at once appeal to all the people to help us right our wrongs by electing Representatives pledged to the interests of the people.

Already some bills have been introduced seeking to amend the Sherman law. When a bill has been perfected which will remedy the injustice done to labor by the recent court decision, it will be presented to Congress for consideration and every effort made to press it to passage.

Instead of being disheartened by this decision of the Supreme Court our labor forces will only be cemented the more closely by the danger which threatens.

This decision will mean a greater awakening for labor than ever before. In fact we feel assured that the people as a whole will join

with us in securing Representatives in Congress who will really represent the industrial, political, material interests of the masses. This work of safeguarding the interests and moral welfare of the workers and of all the people has already begun. It will be carried on with greater vigor since this decision shows the necessity of our
 457 being ably, firmly, clearly, and fully represented in Congress so that it will be impossible for the Supreme Court in future to ignore or misunderstand.

Our fellow-workers and the people as a whole will unite industrially and politically for the safeguarding and protecting of their interests. All need a more widespread knowledge of economic conditions and the trend of modern industry. In this effort we shall have the appreciation and assistance of all our people.

Another thing must not be forgotten. The union is a necessary and inevitable outgrowth of our modern industrial condition. To deny the union the exercise of its normal activities for the protection and advancement of its members and the advancement of society in general is to do a great injury to all the people.

This repression of right and natural activities is bound to finally break forth in violent form of protest, especially among the more ignorant of the people who, if penalized, as they may be under this decree, will feel great bitterness that they are deprived of the opportunity to improve their conditions by voluntary association.

Labor Not Disheartened.

The work and methods of the trade unions and labor organizations are, by the very nature of their large numbers, an open book. All men may know the actions and the doings of the labor unions. The loyal labor papers publish broadcast the aims and progress of the labor movement. The unions appeal to the intelligence, the character, the manhood, the patriotism, and the humanity of the workers and our fellow-man for sympathetic and helpful cooperation. Do the opponents of labor organizations imagine that they can crush the spirit and independence of the men of labor?

Can they imagine themselves in the "Fool's Paradise" where they have succeeded in eliminating the organizations of labor from our public life and body politic, these unions which have done so much to protect and promote the rights and interest and well-being of the American workmen? It is inconceivable, but were it at all possible and the organizations of labor driven out of existence, what then?

Does any one imagine that America's workers will submit to the injustice, the greed, and rapacity of unchecked corporate wealth without some form of resistance?

Kill the trade and labor unions of America: drive them out of existence by legislation and court decrees, and then each worker will be an irresponsible person, without association with his fellows, without opportunity for consultation, and without the constructive influence which open organization gives. Then will he seek his own redress in his own way.

Is such a chaotic condition desirable or preferable to the normal,

rational, intelligent, peaceful organizations of labor of our time? We opine not. Such a condition must not and will not transpire.

The American labor movement is founded upon the inherent principles of justice and right. Its men are loyal—as loyal to the institutions of our Republic as can be found in any walk of life. The unions of labor have done so much for the material, moral, 458 and social uplift of the toilers that they are indelibly impressed upon the hearts and minds, not only of the workers themselves but of every earnest, intelligent, liberty-loving, fair-minded citizen of our country.

The unions of labor will live. They can not be—they must not be—they will not be driven out of existence. Labor demands relief at the hands of Congress; demands it now.

It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat.

To Organized Labor and Friends.

It has seldom occurred that I have found it necessary to use the first person in addressing my fellow-workers and the people through the editorial columns of the American Federationist. What follows here refers to such an extraordinary circumstance and affects the labor organizations, their members, and our friends so fundamentally that I am impelled to address them in the most direct manner. The Supreme Court of the United States on February 3, 1908, rendered a decision in the case of the hat manufacturer Loewe against the United Hatters of North America, and decreed that the Loewe suit for threefold damages can be maintained under the Sherman antitrust law. The Supreme Court holds that the action of the hatters, as described in the complaint, is a combination "in restraint of trade or commerce among the several States" in the sense in which those words are used in the Sherman law.

A decision by the Supreme Court, the highest tribunal of the country, is law and must be obeyed, regardless of whether or not we believe the decision to be a just one.

We protest that the trade unions of the country should not be penalized under the provisions of the Sherman antitrust law. In fact, I know that Congress never intended the law to apply to the labor unions, but the Supreme Court rules that it shall apply to them; therefore, pending action by Congress to define our status and restore our rights by modifying or amending the Sherman law, there is no alternative for labor but to obey the mandate of the court.

Under this decision the publication of a "We don't patronize" list in the American Federationist, or any other publication, makes the organization and the individuals composing it liable to monetary damages and imprisonment (see sections 1, 2, and 7 of Sherman law quoted elsewhere). This being the case, I feel obliged to discontinue the "We don't patronize" list.

This course I pursue upon the advice of the legal counsel of the American Federation of Labor, as to the far-reaching character of

the decision of the Supreme Court. This action is also advised by my colleagues of the executive council.

I have no words adequate to express the regret I feel at being obliged to take this action, especially as in the opinion of competent lawyers—and their opinion is shared by many other laymen as well as myself—this decision by the Supreme Court is unwarranted and unjust, but until Congressional relief can be obtained it must undoubtedly be binding upon us all. Were it only myself

459 personally who might suffer, for conscience sake I should not hesitate to risk every penalty, even unto the extreme, in defense of what I believe to be labor's rights. In this case of the adverse court decision, and indeed, in every other circumstance which may arise, I think those who know me do not question my loyalty, devotion, and willingness to bear fully any responsibility involved in the forwarding of the cause to which my life is pledged; but unfortunately, the terms of the decision are such that no one person, even though president of the American Federation of Labor and willing to assume entire responsibility, will be permitted to take upon himself the sole penalty of protest against what I and every member of every organization affiliated to the American Federation of Labor, and, indeed, every patriotic citizen must feel to be a most sweeping dragnet decision, making the natural and rational voluntary action of workmen unlawful and punishable by fine and imprisonment.

Personal willingness to bear the penalty would avail nothing in this instance to spare the other men of labor and our organizations from the penalties decreed to them by the Supreme Court; in fact, such an attempt on my part would involve a vast number of people who would be held equally responsible with me.

I would fail in performing my duty, though it is a painful one, did I not point out that under this decision each and every officer and member of every labor organization becomes liable for any violation of the decision by anyone, not only as to his organization but individually, to the extent of whatever his possessions may be.

I think our men of labor will agree with me that I have no right to expose them to the heavy penalty for disobedience under this decision of the Supreme Court.

I will say briefly here, as I do more fully editorially, that while obeying the decision of the court I feel most deeply that never in the history of our country has there been so serious an invasion of the rights and liberties of our people.

Under the court's construction of the Sherman law the voluntary and peaceful associations of labor that are organized for the uplifting of the workers, these unions, I say, are made the greatest offenders under the antitrust law.

It is almost unbelievable that our unions which perform so important a service in the interest of civilization and moral and material progress are to be accorded the treatment of malefactors. Yet the more carefully this decision is read the more absolutely clear does it become that our unions are to be penalized by it, as the most

vicious of trusts were intended to be, yet the trusts still go unpunished.

I have a strong hope that Congress will promptly take heed of the injustice that has been done the workers, and will so amend or modify the Sherman antitrust law that the labor unions will be restored to the exercise of the powers and rights guaranteed to all our citizens under the Constitution.

It is not conceivable that Congress will turn a deaf ear to the rightful demand of the workers of the country for relief from this most amazing decision, but until such time as relief is assured, I

am compelled, for the safety of our men of labor, to obey
460 literally the decision of the Supreme Court; but this situation created by the court must be met. It will be met.

While abiding by this decision, I urge most strongly upon my fellow-unionists everywhere to be more energetic than ever before in organizing the yet unorganized, in standing together, in uniting and federating for the common good.

Be more active than ever before in using every lawful and honorable means, not only to secure relief from the present situation at the hands of Congress, but in the doing of everything which may promote the uplifting and noble work of our great cause of humanity. Like all great causes it must meet temporary opposition, but in the end it will accomplish all the more on account of the trials endured.

SAMUEL GOMPERS,

President American Federation of Labor.

[Editorial from American Federalist, by President Samuel Gompers.]

The Supreme Court on January 23 decided that clause in the Erdman Act which provided that railroads might not discharge employees for belonging to a labor union was an interference with "freedom of contract." This means, in plain language, that corporations may have the freedom to blacklist men for being members of labor organizations.

Mark the inconsistency of the Supreme Court. In the *Hatters'* case it declares that the boycott used by the workers is a conspiracy and punishable by heavy penalties. In the *Adair* case, brought under the Erdman Act, it gives a decision which will permit employers to use the blacklist as freely as they please and the wage-workers will have no redress.

Employers may use the blacklist, but wageworkers may not use the boycott. Both decisions are unjust to labor.

The boycott concerns only the manipulation of material products. The blacklist is the denial of the opportunity for a man to work. To blacklist a man—deny him the right to labor—is to deny him the right to live. Humanity was shocked at the discovery of the reconcentrado camps in Cuba, where the Spanish penned in their victims to die by slow starvation, before the Spanish war, yet the blacklist erects as real a barrier—though invisible—around the worker under its ban, and he is often equally condemned to the horrors of slow starvation for himself and his family. It must be

remembered that the blacklisted man is often refused employment on any terms—and for what? Not that he is guilty of crime, but because he has associated with his fellows in a labor union. Much freedom of contract for the wageworkers forsooth under the operation of the blacklist

We hope this decree will prove so repugnant to the country that no employer will be tempted to use it under the shield of the Supreme Court decision. It is another case for Congressional relief.

Supreme Court Decision—Dietrich Loewe et al. vs. Martin Lawlor et al.

(February 3, 1908.)

On a writ of certiorari to the United States circuit court of appeals for the second circuit.

Mr. Chief Justice Fuller delivered the opinion of the court:

This was an action brought in the circuit court for the district of Connecticut under section 7 of the antitrust act of July 2, 1890, claiming threefold damages for injuries inflicted on plaintiffs by combination or conspiracy declared to be unlawful by the act.

Defendants filed a demurrer to the complaint, assigning general and special grounds. The demurrer was sustained as to the first six paragraphs, which rested on the ground that the combination stated was not within the Sherman Act, and this rendered it unnecessary to pass upon any other questions in the case; and, upon plaintiffs declining to amend their complaint, the court dismissed it with costs. (148 Fed. Rep., 924; and see 142 Fed. Rep., 216; 130 Fed. Rep., 633.)

The case was then carried by writ of error to the circuit court of appeals for the second circuit, and that court, desiring the instruction of this court upon a question arising on the writ of error, certified that question to this court. The certificate consisted of a brief statement of facts, and put the question thus: "Upon this state of facts, can plaintiffs maintain an action against defendants under section 7 of the antitrust act of July 2, 1890?"

After the case on certificate had been docketed here plaintiffs in error applied, and defendants in error joined in the application, to this court to require the whole record and cause to be sent up for its consideration. The application was granted, and the whole record and cause being thus brought before this court it devolved upon the court, under section 6 of the judiciary act of 1891, to "decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal."

The case comes up, then, on complaint and demurrer, and we give the complaint in the margin.

The question is whether upon the facts therein averred and admitted by the demurrer this action can be maintained under the antitrust act.

The first, second, and seventh sections of that act are as follows:

"1. Every contract, combination in the form of trust or otherwise or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"7. Any person who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

In our opinion, the combination described in the declaration is a combination "in restraint of trade or commerce among the several States," in the sense in which those words are used in the act, and the action can be maintained accordingly.

And that conclusion rests on many judgments of this court, to the effect that the act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, or restricts, in that regard, the liberty of a trader to engage in business.

The combination charged falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes; and there is no doubt that (to quote from the well-known work of Chief Justice Erle on trade unions) "at common law every person has individually, and the public also has collectively, a right to require that the course of trade should be kept free from unreasonable obstruction." But the objection here is to the jurisdiction, because, even conceding that the declaration states a case good at common law, it is contended that it does not state one within the statute. Thus, it is said, that the restraint alleged would operate to entirely destroy defendants' business and thereby include intrastate trade as well; that physical obstruction is not alleged as contemplated, and that defendants are not themselves engaged in interstate trade.

We think none of these objections are tenable, and that they are disposed of by previous decisions of this court.

462 United States v. Trans-Missouri Freight Association, 166
U. S., 290; United States v. Joint Traffic Association, 171
U. S., 505, and Northern Securities Company v. United States, 193

U. S., 197, hold in effect that the antitrust law has a broader application than the prohibition of restraints of trade unlawful at common law. Thus in the *Trans-Missouri* case it was said that, "assuming that agreements of this nature are not void at common law, and that the various cases cited by the learned courts below show it, the answer to the statement of their validity is to be found in the terms of the statute under consideration;" and in the *Northern Securities* case that "the act declares illegal every contract, combination, or conspiracy in whatever form, of whatever nature, and whoever may be the parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States."

We do not pause to comment on cases such as *United States v. Knight*, 156 U. S., 1; *Hopkins v. United States*, 171 U. S., 578, and *Anderson v. United States*, Id., 604, in which the undisputed facts showed that the purpose of the agreement was not to obstruct or restrain interstate commerce. The object and intention of the combination determined its legality.

In *Swift v. United States*, 196 U. S., 395, a bill was brought against a number of corporations, firms, and individuals of different States, alleging that they were engaged in interstate commerce in the purchase, sale, transportation, and delivery, and subsequent resale at the point of delivery, of meats; and that they combined to refrain from bidding against each other in the purchase of cattle; to maintain a uniform price at which the meat should be sold; and to maintain uniform charges in delivering meats thus sold through the channels of interstate trade to the various dealers and consumers in other States. And that thus they artificially restrained commerce in fresh meats from the purchase and shipment of live stock from the plains to the final distribution of the meats to the consumers in the markets of the country.

Mr. Justice Holmes, speaking for the court, said:

"Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State with the expectation that they will end their transit after purchase in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce.

* * * * *

"The general objection is urged that the bill does not set forth sufficient definite or specific facts. This objection is serious, but it seems to us inherent in the nature of the case. The scheme alleged is so vast that it presents a new problem in pleading. If, as we must assume, the scheme is entertained, it is, of course, contrary to the very words of the statute. Its size makes the violation of the law more conspicuous, and yet the same thing makes it impossible to fasten the principal fact to a certain time and place. The elements, too, are so numerous and shifting, even the constituent parts alleged are and from their nature must be so extensive in time and space that something of the same impossibility applies to them.

* * * * *

"The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately, when we take them up as distinct charges, they are alleged sufficiently as elements of a scheme. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as parts of a single plan. The plan may make the parts unlawful."

And the same principle was expressed in *Aikens v. Wisconsin*, 195 U. S., 194, involving a statute of Wisconsin prohibiting combinations "for the purpose of willfully or maliciously injuring another in his reputation, trade, business, or profession by any means whatever," etc., in which Mr. Justice Holmes said:

"The statute is directed against a series of acts, and acts of several, the acts of combining, with intent to do other acts. 'The very plot is an act in itself.' *Mulcahy v. The Queen*, L. R., 3 H. L., 306, 317. But an act, which in itself is merely a voluntary muscular contraction, derives all its character from the consequences which will follow it under the circumstances in which it was done. When the acts consist of making a combination calculated to cause temporal damage, the power to punish such acts, when done maliciously, can not be denied because they are to be followed and worked out by conduct which might have been lawful if not preceded by the acts. No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law."

In *Addyston Pipe and Steel Company v. United States*, 175 U. S., 211, the petition alleged that the defendants were practically the only manufacturers of cast-iron within thirty-six States and Territories; that they had entered into a combination by which they agreed not to compete with each other in the sale of pipe, and the territory through which the constituent companies could make sales was allotted between them. This court held that the agreement which, prior to any act of transportation, limited the prices at which the pipe could be sold after transportation, was within the law. Mr. Justice Peckham delivering the opinion, said: "And when Congress has enacted a statute such as the one in question, any agreement or combination which directly operates not alone upon the manufacture, but upon the sale, transportation, and delivery of an article of interstate commerce," by preventing or restricting its sale, etc., thereby regulates interstate commerce.

In *Montague & Company v. Lowry*, 193 U. S., 38, which was an action brought by a private citizen under section 7 against a combination engaged in the manufacture of tiles, defendants were wholesale dealers in tiles in California and combined with manufacturers in other States to restrain the interstate traffic in tiles by refusing to sell any tiles to any wholesale dealer in California who was not a member of the association except at a prohibitive rate. The case

was a commercial boycott against such dealers in California as would not or could not obtain membership in the association. The restraint did not consist in a physical obstruction of interstate commerce, but in the fact that the plaintiff and other independent dealers could not purchase their tiles from manufacturers in other States because such manufacturers had combined to boycott them. This court held that this obstruction to the purchase of tiles, a fact antecedent to physical transportation, was within the prohibition of the act. Mr. Justice Peckham, speaking for the court, said, concerning the agreement, that it "restrained trade, for it narrowed the market for the sale of tiles in California from the manufacturers and dealers therein in other States, so that they could only be sold to the members of the association, and it enhanced prices to the nonmember."

The averments here are that there was an existing interstate traffic between plaintiffs and citizens of other States, and that for the direct purpose of destroying such interstate traffic defendants combined not merely to prevent plaintiffs from manufacturing articles then and there intended for transportation beyond the State, but also to prevent the vendees from reselling the hats which they had imported from Connecticut, or from further negotiating with plaintiffs for the purchase and intertransportation of such hats from Connecticut to the various places of destination. So that, although some of the means whereby the interstate traffic was to be destroyed were acts within a State and some of them were in themselves as a part of their obvious purpose and effect beyond the scope of Federal authority, still as we have seen, the acts must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of intrastate business might be affected in carrying it out. If the purposes of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced and at the other end after the physical transportation ended was immaterial.

Nor can the act in question be held inapplicable because defendants were not themselves engaged in interstate commerce. The act made no distinction between classes. It provided that "every" contract, combination, or conspiracy in restraint of trade was illegal. The records of Congress show that several efforts were made to exempt by legislation organizations of farmers and laborers from the operation of the act, and that all these efforts failed, so that the act remained as we have it before us.

In an early case, *United States v. Workingmen's Amalgamated Council* (54 Fed. Rep., 994), the United States filed a bill under the Sherman act in the circuit court for the eastern district of Louisiana, averring the existence of "a gigantic and widespread combination of the members of a multitude of separate organizations for the purpose of restraining the commerce among the several States and with foreign countries" and it was contended that the statute did not refer to combinations of laborers. But the court, granting the injunction, said:

464 "I think the Congressional debates show that the statute had its origin in the evils of massed capital; but, when the

Congress came to formulating the prohibition, which is the yardstick for measuring the complainant's right to the injunction, it expressed it in these words: 'Every contract or combination in the form of trust, or otherwise in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal.' The subject had so broadened in the minds of the legislators that the source of the evil was not regarded as material, and the evil in its entirety is dealt with. They made the interdiction include combinations of labor as well as of capital; in fact, all combinations in restraint of commerce, without reference to the character of the persons who entered into them. It is true this statute has not been much expounded by judges, but, as it seems to me, its meaning, as far as relates to the sort of combinations to which it is to apply, is manifest and that it includes combinations which are composed of laborers acting in the interest of laborers."

* * * * *

"It is the successful effort of the combination of the defendants to intimidate and overawe others who were at work in conducting or carrying on the commerce of the country, in which the court finds their error and their violation of the statute. One of the intended results of their combined action was the forced stagnation of all the commerce which flowed through New Orleans. This intent and combined action are none the less unlawful because they included in their scope the paralysis of all other business within the city as well."

The case was affirmed on appeal by the circuit court of appeals for the fifth circuit. (57 Fed. Rep., 85.)

Subsequently came the litigation over the Pullman strike and the decisions *In re Debs* (64 Fed. Rep., 724, 745, 755; 158 U. S., 564). The bill in that case was filed by the United States against the officers of the American Railway Union, which alleged that a labor dispute existed between the Pullman Palace Car Company and its employees; that thereafter the four officers of the railway union combined together and with others to compel an adjustment of such dispute by creating a boycott against the cars of the car company; that to make such boycott effective they had already prevented certain of the railroads running out of Chicago from operating their trains; that they asserted that they could and would tie up, paralyze, and break down any and every railroad which did not accede to their demands, and that the purpose and intention of the combination was "to secure unto themselves the entire control of the interstate, industrial, and commercial business in which the population of the city of Chicago and of other communities along the lines of road of said railways are engaged with each other, and to restrain any and all other persons from any independent control or management of such interstate, industrial, or commercial enterprises, save according to the will and with the consent of the defendants."

The circuit court proceeded principally upon the Sherman anti-trust law, and granted an injunction. In this court the case was rested upon the broader ground that the Federal Government had full power over interstate commerce and over the transmission of the mails, and in the exercise of those powers could remove every-

thing put upon highways, natural or artificial, to obstruct the passage of interstate commerce or the carrying of the mails. But in reference to the antitrust act the court expressly stated:

"We enter into an examination of the act of July 2, 1890 (c. 647, 26 Stat., 209), upon which the circuit court relied mainly to sustain its jurisdiction. It must not be understood from this that we dissent from the conclusions of that court in reference to the scope of the act, but simply that we prefer to rest our judgment on the broader ground which has been discussed in this opinion, believing it of importance that the principles underlying it should be fully stated and affirmed."

And in the opinion Mr. Justice Brewer, among other things, said:

"It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of State legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a State to legislate in such a manner as to obstruct interstate commerce. If a State, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?"

The question answers itself, and in the light of the authorities the only inquiry is as to the sufficiency of the averments of fact.

465 We have given the declaration in full in the margin, and it appears therefrom that it is charged that defendants formed a combination to directly restrain plaintiffs' trade; that the trade to be restrained was interstate; that certain means to attain such restraint were contrived to be used and employed to that end; that those means were so used and employed by defendants, and that thereby they injured plaintiffs' property and business.

At the risk of tediousness, we repeat that the complaint averred that plaintiffs were manufacturers of hats in Danbury, Conn., having a factory there, and were then and there engaged in an interstate trade in some twenty States other than the State of Connecticut; that they were practically dependent upon such interstate trade to consume the product of their factory, only a small percentage of their entire output being consumed in the State of Connecticut; that at the time the alleged combination was formed they were in the process of manufacturing a large number of hats for the purpose of fulfilling engagements then actually made with consignees and wholesale dealers in States other than Connecticut, and that if prevented from carrying on the work of manufacturing these hats they would be unable to complete their engagements.

That defendants were members of a vast combination called The United Hatters of North America, comprising about 9,000 members and including a large number of subordinate unions, and that they were combined with some 1,400,000 others into another association known as the American Federation of Labor, of which they were members, whose members resided in all the places in the several States where the wholesale dealers in hats and their customers re-

sided and did business; that defendants were "engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business, to organize their workmen in the departments of making and finishing, in each of their factories, into an organization, to be part and parcel of the said combination known as The United Hatters of North America, or as the defendants and their confederates term it, to unionize their shops, with the intent thereby to control the employment of labor in and the operation of said factories, and to subject the same to the direction and control of persons, other than the owners of the same, in a manner extremely onerous and distasteful to such owners, and to carry out such scheme, effort, and purpose by restraining and destroying the inter-state trade and commerce of such manufacturers by means of intimidation of and threats made to such manufacturers and their customers in the several States of boycotting them, their product, and their customers, using therefor all the powerful means at their command as aforesaid, until such time as, from the damage and loss of business resulting therefrom, the said manufacturers should yield to the said demand to unionize their factories."

That the conspiracy or combination was so far progressed that out of 82 manufacturers of this country engaged in the production of fur hats 70 had accepted the terms and acceded to the demand that the shop should be conducted in accordance, so far as conditions of employment were concerned, with the will of the American Federation of Labor; that the local union demanded of plaintiffs that they should unionize their shop under peril of being boycotted by this combination, which demand defendants declined to comply with; that thereupon the American Federation of Labor, acting through its official organ and through its organizers, declared a boycott.

The complaint then thus continued:

"20. On or about July 25, 1902, the defendants individually and collectively, and as members of said combinations and associations, and with other persons whose names are unknown to the plaintiffs, associated with them, in pursuance of the general scheme and purpose aforesaid, to force all manufacturers of fur hats, and particularly the plaintiffs, to so unionize their factories, wantonly, wrongfully, maliciously, unlawfully, and in violation of the provisions of the act of Congress approved July 2, 1890, and entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' and with intent to injure the property and business of the plaintiffs by means of acts done which are forbidden and declared to be unlawful by said act of Congress, entered into a combination and conspiracy to restrain the plaintiffs and their customers in States other than Connecticut in carrying on said trade and commerce among the several States and to wholly prevent them from engaging in and carrying on said trade and commerce between them and to prevent the plaintiffs from selling their hats to wholesale dealers and purchasers in said States other than Connecticut, and to prevent said dealers and customers in said other

States from buying the same and to prevent the plaintiffs from obtaining orders for their hats from such customers and filling the same and shipping said hats to said customers in said States as aforesaid and thereby injure the plaintiffs in their property and business and to render unsalable the product and output of their said factory, so the subject of interstate commerce, in whosoever hands the same might be or come, through said interstate trade and commerce, and to employ as means to carry out said combination and conspiracy and the purposes thereof and accomplish the same, the following measures and acts, viz:

"To cause, by means of threats and coercion, and without warning or information to the plaintiffs, the concerted and simultaneous withdrawal of all the makers and finishers of hats then working for them, who were not members of their said combination, The United Hatters of North America, as well as those who were such members, and thereby cripple the operation of the plaintiffs' factory, and prevent the plaintiffs from filling a large number of orders then on hand, from such wholesale dealers in States other than Connecticut, which they had engaged to fill and were then in the act of filling, as was well known to the defendants; in connection therewith to declare a boycott against all hats made for sale and sold and delivered, or to be so sold or delivered, by the plaintiffs to said wholesale dealers in States other than Connecticut, and to actively boycott the same and the business of those who should deal in them, and thereby prevent the sale of the same by those in whose hands they might be or come through said interstate trade in said several States; to procure and cause others of said combinations united with them in said A. F. of L. in like manner to declare a boycott against and to actively boycott the same and the business of such wholesale dealers as should buy or sell them, and of those who should purchase them from such wholesale dealers; to intimidate such wholesale dealers from purchasing or dealing in the hats of the plaintiffs by informing them that the A. F. of L. had declared a boycott against the product of the plaintiffs and against any dealer who should handle it, and that the same was to be actively pressed against them, and by distributing circulars containing notices that such dealers and their customers were to be boycotted; to threaten with a boycott those customers who should buy any goods whatever, even though union made, of such boycotted dealers, and at the same time to notify such wholesale dealers that they were at liberty to deal in the hats of any other non-union manufacturer of similar quality to those made by the plaintiffs, but must not deal in the hats made by the plaintiffs under threats of such boycotting; to falsely represent to said wholesale dealers and their customers, that the plaintiffs had discriminated against the union men in their employ, had thrown them out of employment because they refused to give up their union cards and teach boys, who were intended to take their places after seven months' instruction, and had driven their employees to extreme measures by their persistent, unfair, and un-American policy of antagonizing union labor, forcing wages to a starvation scale, and given boys and cheap, unskilled foreign labor preference over ex-

perieneced and capable union workmen,' in order to intimidate said dealers from purchasing said hats by reason of the prejudice thereby created against the plaintiffs and the hats made by them among those who might otherwise purchase them; to use the said union label of said The United Hatters of North America as an instrument to aid them in carrying out said conspiracy and combination against the plaintiffs' and their customers' intertrade aforesaid, and in connection with the boycotting above mentioned, for the purpose of describing and identifying the hats of the plaintiffs and singling them out to be so boycotted; to employ a large number of agents to visit said wholesale dealers and their customers, at their several places of business, and threaten them with loss of business if they should buy or handle the hats of the plaintiffs, and thereby prevent them from buying said hats, and in connection therewith to cause said dealers to be waited upon by committees representing large combinations of persons in their several localities to make similar threats to them; to use the daily press in the localities where such wholesale dealers reside, and do business, to announce and advertise the said boycotts against the hats of the plaintiffs and said wholesale dealers, and thereby make the same more effective and oppressive, and to use the columns of their said paper, *The Journal of the United Hatters of North America*, for that purpose, and to describe the acts of their said agents in prosecuting the same."

And then followed the averments that the defendants proceeded to carry out their combination to restrain and destroy interstate trade and commerce between plaintiffs and their customers in other
467 States by employing the identical means contrived for that purpose; and that by reason of those acts plaintiffs were damaged in their business and property in some \$80,000.

We think a case within the statute was set up and that the demurrer should have been overruled.

Judgment reversed and cause remanded with a direction to proceed accordingly.

MR. SULZER: Mr. Chairman, that decision is the supreme law of the land, and a cynic has recently defined "the supreme law of the land" to be the last guess of the United States Supreme Court. In my opinion there is a great distinction between the legal responsibility of a corporation and a trades union. They differ widely. A corporation is an artificial person created by law, and what the State creates the State has a right to regulate. The trades union is a voluntary association of free individuals possessed of the same rights of action as belong to individuals and destitute of corporate rights and corporate responsibility. The judges and lawyers of England and America invented for labor unions the rule of corporate responsibility and sought to punish their acts as conspiracies in restraint of trade. This legal notion the English statute expressly abolished and made it lawful for an association of workmen to do whatever is legal for an individual workman to do. This wise legislation has been embodied in the laws of Pennsylvania, Michigan, and other enlightened Commonwealths. It has not yet been adopted by the Congress, but I feel confident that it will be and ought to be before

this session adjourns, and then it must be recognized by the Supreme Court of the United States.

Mr. Chairman, just a few words more. I want to say that I am now, and always have been, and always expect to be the friend of the toilers of the country. Anything I can ever do, in Congress or out of Congress, to promote their interests and protect their rights I shall do cheerfully. I believe in the rights of man and in the dignity of labor. All that we are and all that we hope to be we owe to the workers of our country. This decision of the Supreme Court seems to regard the rights of hats as superior to the rights of man. In my opinion a labor union or a trades union organized to promote the interests and protect the rights of labor is not a trust, never was a trust, and never will be a trust, in the true contemplation and construction of the provisions of the so-called "antitrust act of 1890." I shall not at this time, however, discuss this matter in detail. Mr. Gompers has done that in a masterful way, and my object in taking the floor to-day was for the purpose of placing his views regarding this sweeping decision in the Congressional Record; and I trust that the legislation now demanded by the American Federation of Labor in this connection and in other matters of moment may be enacted into laws before this session of Congress adjourns. Labor appeals to us now from one end of the country to the other. The question of the hour is, Will the Congress hear? Will the Congress heed? Will the Congress respond?

468 To the foregoing offer Mr. Ralston objected as irrelevant, incompetent and immaterial, as not referred to, in any way, shape or manner, in the charges themselves, not tending to support them and apparently something happening long after the date of the events complained of.

Mr. Davenport offered in evidence editorial by Mr. Gompers, in the March, 1908, *Federationist*, beginning on page 182, entitled "Labor Organizations Must Not Be Outlawed," etc.

(This offer is not repeated in this record, forming, as it does, part of the speech of Hon. William Sulzer, immediately preceding.)

The foregoing offer was objected to by Mr. Ralston as incompetent, irrelevant and immaterial, and not properly proven.

At the conclusion of this offer, the following colloquy occurred and agreement was made between counsel.

Mr. RALSTON: If your Honor please, it will of course be understood that I have not made specific objections as we went on. Of course it will be understood that all of the evidence which has been introduced is subject to the exception originally reserved by us affecting the question of the statute of limitations. In other words, all the events complained of are barred by the statute of limitations and all the offers to prove tend to show, if anything, events which were barred by the statute of limitations.

In addition to that, for the sake of reserving all rights,
469 I want to ask that it be understood that in so far as applicable to each one of the several defendants, the objections which have been made from time to time in this case be considered as having been made for them, instead of it being necessary for me to say

at each moment "I make this objection on behalf of Mr. Gompers, and this on behalf of Mr. Morrison", and so on. I presume Mr. Darlington will have no objection to that.

MR. DARLINGTON: I did not quite catch what you said, Mr. Ralston.

MR. RALSTON: That the objections which have been made to the testimony generally all the way through may be considered as being made on behalf of anyone of the three respondents to whom it might be proper to make an objection.

MR. DARLINGTON: That is all right.

470

Testimony for the Respondents.

LOUIS S. STEARNE being first duly sworn (page 741) on oath, testified, in substance as follows:

Is file clerk at the A. F. of L., and has been since June 19, 1909. Was so acting in December 1907.

Q. Did you receive any instructions from Mr. Gompers, in the month of December, 1907, relative to watching at the courthouse to see when the injunction bond in the Buck's Stove & Range Company case should be approved?

(Objected to by Mr. Darlington as being irrelevant, instructions given by Mr. Gompers to anybody else having no connection with the case. Ruling reserved. Further that it is self-serving testimony, made in anticipation of a difficulty, and on that ground, as well as on the ground that it is not connected with any proof in the case, it is incompetent.)

Gompers called witness in his office early in December, late in the afternoon, judges it was between three and five o'clock, and asked him to proceed to the City Hall and ascertain whether the undertaking had been filed. One — the clerks referred to a book and told witness that it had not been. Then he reported the same back to Gompers. Recollection is that at that time the January, 1908, Federationist had gone to press.

(It is agreed that Mr. Darlington's objection shall apply to all this line of examination without being repeated.)

Understood Gompers to say that in order for the injunction
471 to become operative, a bond or undertaking had to be filed before the Federationist went to press, and his idea was to see whether the injunction was operative.

(Mr. Darlington moves to strike out the testimony of the witness about what he understood and what Gompers' idea was.)

Don't remember Gompers' exact language, or said something like this: "I want you to go and find out if this undertaking has been filed, as I want to ascertain if the injunction has become operative." Remembers it became operative in the latter part of December. Recollects very distinctly that Gompers called witness into his office and ask- him to request everybody in the office to report in the large back room on G Street; he had something to say to them. This

witness communicated to the employees. Should imagine it was after the bond was approved, from the statement made by Mr. Gompers after we got into the room. After the employees were in the room, Mr. Gompers came out of his office and said: "Ladies and gentlemen, I call you together to state that I have just received information from my attorney that an injunction has been issued against the American Federation of Labor in the Buck's Stove & Range case, and you, being employees of the Federation of Labor, are of course its agents, and you are requested not to mail anything, or do anything, in any way, that would violate the injunction." That is about what he said. Believes there was some thirty or thirty-five employees who heard him make that statement. Did not, therefore, mail anything relative to the Buck's Stove & Range Company.

472 Have a recollection, after that date, of seeing the January, 1908, Federationists stored in the cellar. Immediately, as witness recalls, after Mr. Gompers gave these instructions. Had the job of moving the Federation of Labor from G Street to the Ouray Building. Had a store room downstairs, and as things were moved, witness coming to the store room, came across an enormous batch of Federationists. This was at night, and he recalls calling Mr. Gompers to the phone, and asking him about it. Told him they were the January, 1908, Federationists, and some others. Directed witness to dispose of them, but not to destroy any trade union reports or records. He must have these, but to dispose of the Federationists. There was a big pile of the January, 1908, Federationists. They were wrapped up tightly, tied with rope and stored away in the cellar. That night put them in a vacant room. The next day sold these miscellaneous magazines for old paper, and some thirty dollars, witness believes, was received for them. So far as witness knows nothing of the January, 1908, Federationist, was distributed after Gompers said it should not be. After the January, 1908, Federationist, the name of the Buck's Stove and Range Company never appeared on what was called the "Unfair" or "We Don't Patronize" list.

Cross-examination:

Thinks that the name did not appear on the unfair list because of the injunction. Did not mean to deceive the court in saying that he had examined subsequent files, and did not find the Buck's

Stove and Range Company's name in the unfair list. In examining subsequent Federationists found no unfair list at all.

473 Don't know why it was abolished. Supposes the Buck's Stove and Range Company was ordered off, but why the entire list was abolished, could not say. Recollection is that "We Don't Patronize" list never appeared.

(By Mr. DARLINGTON: "Mr. Davenport informs me that the unfair list was not abolished in the following issue.")

Witness thinks he had been to the clerk's office some days before the January Federationist was printed. Could not say how many. Imagined the people were called together in the latter part of December. How long a time elapsed since his visit to the courthouse,

he does not know. It was around the 18th of December somewhere. Imagines thirty-five employees were summoned at the request of Mr. Gompers, because they always carried about that many, or that number. Called everybody so that they might know, so that everybody in the office might hear his statement. Witness was file clerk, had nothing to do with the mailing. Might as well have said that he mailed nothing before that date. Is not mail clerk. Employees usually obeyed instructions and witness took it that they would not have mailed them. Have not any absolute proof. Thinks they would obey orders given by Mr. Gompers. That is about all he knows whether they obeyed them or not.

(Mr. Darlington moves to strike out the testimony of witness about obedience to orders.)

Did not know of any being mailed thereafter. Has no means of knowing whether others mailed them or not. Don't know anything about it being sold in the office after that date.

474 Redirect by Mr. RALSTON:

Is under the impression that Mr. Gompers in his address to the employees said that if they were in doubt about mailing anything, to turn it over to him, and he would decide and determine whether or not they were in violation of the injunction, or were for distribution. It is witness's belief that the January numbers, when I stored them downstairs, were not to be circulated, and the idea of putting them down there was so that nobody could get hold of them. Witness knew he had the keys to that room.

(Mr. DARLINGTON: The answer is objected to.)

Does not recollect that he was called upon thereafter for copies for mailing purposes. Does not see how any mailing could take place without his being called on for the keys. The "We Don't Patronize" List appears in the February 1908 Federationist, but not the Buck's Stove & Range Company.

Recross by Mr. DARLINGTON:

Knows that the Buck's Stove & Range Company is referred to in the February 1908 Federationist, but it is not on the "We Don't Patronize" list. Has only examined the Federationist as to the "We Don't Patronize" List, to see if reference was made to the Buck's Stove and Range Company.

Q. Have you, or have you not found, on the second paragraph, in the editorial page, a reference to it as having been on the unfair list?

Mr. RALSTON: I object to the question as not responsive to the direct examination.

A. It states that it has been ordered removed from the unfair list.

475 It shows that it had been on the unfair list. Witness only referred to the "We Don't Patronize" List. Is able to

state that it is not probable that any copies of the Federationist were ever mailed or sold after this address by Mr. Gompers. Cannot state absolutely that it was done. So far as he knows anything about it, it was done. Could not say that every copy of the Federationist was placed in his charge under lock and key, but judges they were. Could not say how soon after the suggestion of Mr. Gompers, the January Federationist was taken down into the file room. Thinks Mr. Morrison, or Mr. Gompers gave the order to put them there in witness's charge. It may have been Mr. Morrison. Knows that Mr. Morrison was away, but cannot say whether he was away at that time, or not.

Miss R. L. GUARD (page 755) being first duly sworn on oath, testified, in substance, as follows:

She is Mr. Gompers' private secretary, and has been with him about thirteen years, but not private secretary all the time. Her commencement as private secretary was so gradual it would be difficult to say when she began. It was as the work grew and she got more and more into it, that she gradually got the position of, and assumed the duties of private secretary. Was acting as such in December 1907. Remembers about the time of the issuance of an injunction and the approval of a bond in the Buck's Stove and Range Company case. About the time the court's order was issued, Mr.

476 Gompers had all of the employees of the office assemble in one large room, and explained to them the court's order and just what it meant, and then issued instructions to the effect that if there was any question about mailing any matter pertaining to the Buck's Stove and Range Company, it was to be referred to him. He explained the gravity of the situation and just what the order meant, explaining that it involved the employees of the Federation, as being its agents. They were not to send out any matter pertaining to the Company, and all such matters were to be referred to Mr. Gompers. Does not know whether after that date any copies of the January, 1908, Federationist were sent out, because that would not come under her. Supposes it would be in the shipping department. So far as her knowledge goes, no copies were sent out, and cannot recall if any were sold. Knows, in a general way, that the January, 1908, Federationists were stored away down in the basement, so as to make it impossible for any one to get hold of them and send any of them out, but that did not come under her special department of work. So far as she knew, the instructions given by Mr. Gompers were observed. Knows that Mr. Morrison gave instructions about no printed matter, referring to the Buck's Stove and Range Company, being sent out. Knows that in a general way.

Cross-examination:

During the holidays of 1907, is not positive whether she was in the office. Thinks probably she was there. Was present when Mr. Gompers made the address to the employees. Is not sure whether she spent Christmas in Washington, or at her home near
477 Charlottesville, Virginia. Cannot remember any incident that enables her to call to mind whether at that Christmas

she was at either place. Remembers when testimony was taken about three and one-half years ago, at the headquarters of the Federation, before Mr. Harper. Does not remember just how far back it was. Remembers Mr. Gompers and Mr. Mitchell were there; is not sure as to Mr. Mitchell.

(Questions above answered are objected to by respondents' counsel as immaterial and not responsive.)

Cannot state what day of the week, or month, it was when a meeting was called and Mr. Gompers addressed the employees. In substance he called their attention to the fact that an injunction was now in operation, and asked everyone of them to abide by its provisions strictly and faithfully, and in case any matter should come to them that might involve the terms of the injunction, it should be referred to him. Does not recall that he said anything about mailing anything. The way she understood it was that if any question of mailing, or anything came up bearing the name of the Buck's Stove and Range Company, it was to be referred to him. Understood that the instructions did refer to mailing. Could not remember his exact words, but her recollection of the substance of what he said was to that effect. The general trend of what he said was that an injunction was in operation, and that he would ask everyone of them to abide by its provisions strictly and faithfully, and in case any matter should come up to them relative to anything that might

involve the question of the terms of the injunction, that 478 they should be referred to him. It was a very unusual thing for him to do. Did not think of his ever having done it before, and that is why she remembers it. Could not say whether Morrison was there, or not. Thinks he was; is not sure. Does not recall whether Mr. Morrison was away from Washington from before Christmas until after New Years, or was there. Is her general impression that he was there when the employees were called in, but could not state positively. Understood from his instructions that the employees were not to send out anything connected with the Buck's Stove & Range Company, and that everything was to be referred to Gompers. Cannot say whether the Federationist for February, March, April and May were sent out. They go from the shipping department.

Miss JOSEPHINE T. KELLY (page 772) being first duly sworn on oath, testified, in substance, as follows:

Is secretary to Mr. Morrison. Cannot say how long she has been such. Was secretary in December 1907, and January 1908. Recalls the issuance of a restraining order in the Buck's Stove & Range Company against the Federation, including Mr. Gompers and Mr. Morrison. Was called about that time to attend a meeting of the employees, at which Mr. Gompers gave certain instructions, which meeting was in the large room where the stenographers work, on the ground floor of the Typographical Hall building. All employees who were at work that day were present. Cannot recall the date. All she knows is that it was upon Mr. Gompers learning of the injunction order, the decision of the court in the Buck's Stove &

479 Range Company case. He explained the injunction, and the fact that as employees of the Federation, they were in a sense its agents, and that none of the clerks were to send out any matter referring to the Buck's Stove & Range Company matter, and any letters, or correspondence of any character affecting that concern, were to be turned in to him. The January, 1908, number of the Federationist was not sent out by any clerk. She understood that they were not to be sent out at all. He instructed the employees as to what not to do. Her recollection is that Mr. Morrison was out of the city; He was to go to his home in Canada. Don't know whether he made other trips, or not, in connection with his trip home. Could not say how long it was thereafter that Mr. Morrison returned. Does not recall any additional instructions from Mr. Morrison on his return. Recollection is that Mr. Gompers' instructions were sufficient, and perfectly clear to all employees, and Mr. Morrison may have reiterated them if there was any special matter that came before his attention. Can say that the instructions given by Mr. Gompers were followed by employees.

Cross-examination:

There was no special appointment of witness to the position of private secretary to Mr. Morrison. Had always handled a certain line of correspondence, and in the course of time was able to take up more as she became better acquainted with the work. Guesses she was as much secretary prior to Christmas 1907, as she is now. Cannot remember the precise date of the issuance of the injunction against Gompers, Morrison and Mitchell. Recollects that Mr. Morrison was not here. He had gone to Canada on that trip to his 480 parents' home. Does not recall his coming back some ten days later with his daughter to put her in a boarding school. Does not remember of her being here at all. Cannot tell what time he returned. Remembers it was a matter of investigation some three years ago at the hearing. Had nothing to do with looking it up, or looking at the accounts. Does not remember any investigation as to hiatus in the accounts from December 21 to December 31. Am quite positive that the instructions given by Gompers were given before Mr. Morrison's return. Recollects that they were. Cannot recollect whether before or after Christmas. Only knows they were given as soon as Mr. Gompers learned of the decision of the court. This information was generally known. They were all more or less interested in it, and were then summoned into that room. Does not remember that Mr. Gompers testified January 30, 1908, with regard to that issue, or with regard to the statement that the Federationist could be had, if anyone wanted it, at the American Federationist headquarters.

MR. RALSTON: I move to strike that question and answer out as being an erroneous statement of fact.

MR. DAVENPORT: Of course, when Mr. Gompers takes the stand he will explain all these matters, I suppose.

MR. RALSTON: The objection is made to that remark as being improper.

Any pile of Federationists in the hall at that time did not make any impression on her. Used the safe in the hall because of lack of sufficient space, and when new stock was received, it was put
481 there. The practice was to pile up the new stock in the hall.

Cannot recall anything in particular about seeing the January, 1908, issue in the hall. Only knows that it was put away, so the clerks could not get hold of it. Never worked on Christmas, or New Year's day. Don't remember of taking any vacation while Mr. Morrison was in Canada. Was there daily, except the two holidays.

Redirect examination:

Don't recall the words of Mr. Gompers when he addressed those present. Knows it was immediately upon learning that the injunction had gone into effect, and that we were called together. Recollects that he addressed the employees and called their attention to the fact that the injunction was in operation, and that he would ask everyone of them to abide by its provisions strictly and faithfully, and that any matter that would come to them relative to anything involving the terms of the injunction should be referred to him.

J. E. GILES (page 780) being first duly sworn on oath, testified, in substance, as follows:

Is one of the bookkeepers of the Federation, and had been employed by it since December 9, 1907. In that month was in the files department, and during it was summoned to go into the large room occupied by the stenographers with all the rest of the employees. Cannot recollect the instructions in full, given by Mr. Gompers, but as far as he recollects Mr. Gompers said that he had just learned the injunction had been issued and his orders were that anything pertaining to the Buck's Stove and Range Company should not
482 be sent out, and if anything should come into the hands of the clerks, it should be brought to him. That is about all he recollects. Was employed there on filing work.

Cross-examination:

When letters came in he would mark them and help Mr. Sterne, the chief. Had nothing to do with sending out the Federationist, or selling it. Would just file letters and copy letters in copy books. Cannot recollect how many employees of the Federation were concerned, either in mailing or selling the Federationist. Had only been there a little while. Does not know why he was called in. The way he understood it was that anything pertaining to the Buck's Stove and Range Company was not to be sent out. Does not recollect whether the February or March Federationist was sent out. Did not have anything to do with that. Was in the file room.

E. R. BROWNLEY being first duly sworn (page 782) testified, in substance as follows:

Became an employee of the American Federationist about the middle of 1907, and in the month of December was in the file room

and supply department. Was called upon, with the other employees, to attend a meeting the latter part of December, to be addressed by Mr. Gompers. Mr. Gompers said something along the line that we were not to send out anything pertaining to the Buck's Stove & Range Company, and all such matters should be referred to him. Does not remember any special instructions given about the January, 1908, Federationist, and does not know what was done with it after that. Does not remember that he had anything to do with it. Has stated all he recollects with regard to Gompers' instructions.

483 Cross-examination:

Was in the file room doing general office work, but as he remembers, has nothing to do with the Federationist. Does not know particularly why he was sent for and told not to do things he had nothing to do with. All the employees in the office were summoned to that meeting. As he had just gone there, he did not know much about it. Went there about August and remained there about a year and a half. There were no Federationists sold that he knows of. They were sent out by the mailing forces. The clerks in the mailing room were employed for that purpose. Did not see any one employed in the room at that time who attended the meeting.

Redirect examination:

Knows of no employees on the Federationist in the Federationist office who were not at the meeting. All the employees, whether in the mailing branch or the filing branch of the office, were there.

Recross-examination:

Said all employees were there. Don't remember any one from the bookkeeping department. Knew some of the bookkeepers, but don't remember seeing them there at that time.

Redirect examination:

Does not know of any bookkeeper who was not present. Everyone in the office was notified.

Recross by Mr. DARLINGTON:

Said all employees were summoned. Knows that they
484 were all told, because he was told and supposed all *all* the others were told.

L. A. STERNE (page 787) being recalled testified, in substance, as follows:

Summoned the employees of every department, including the bookkeepers, to attend the meeting addressed by Mr. Gompers. Saw they were present, because he never reported back to President Gompers for him to address them, until he knew they were all in the room.

Cross-examination by MR. DARLINGTON:

J. W. Bernhardt and John Lowe were present from the bookkeeping department. Had two or three clerks, there may have been four or five. The bookkeepers received the record of all the money that came in. Thinks that when an order came for the Federationist, it went out from the shipping room. Cannot say who were employed there. Mr. Manning from the shipping department was present at the address. Thinks James Brown, who has since died, was also. Bernhardt is out of the city. Does not know where John Lowe is. He is not employed there any more. Witness knew where he and everyone was working and made it his business to see that all of them were there before he went upstairs and informed Mr. Gompers that they were ready to appear. Cannot tell of anyone besides Mr. Manning whose duty it was to sell Federationists to applicants. Employees come and go a good deal. Mr. Manning is the only one he can recollect. Could not be positive in giving anyone else's name whose duty it was to sell Federationists to those who wanted to buy it.

485 (The respondents' counsel offered in evidence on page 127 of the American Federationist of February, 1908, under the heading of "We Don't Patronize" down to the words "state of employment, December 1907", on page 128; said offer being as follows:

We Don't Patronize.

When application is made by an international union to the American Federation of Labor to place any business firm upon the "We Don't Patronize" list the international is required to make a full statement of its grievance against such company, and also what efforts have been made to adjust the same.

The American Federation of Labor either through correspondence or by duly authorized representatives seeks an interview with such firm for the purpose of ascertaining the company's version of the matter in controversy.

After having exhausted in this way every effort to amicably adjust the matter, the application, together with a full history of the entire matter, is submitted to the Executive Council of the American Federation of Labor for such action as it may deem advisable. If approved, the firm's name appears on the "We Don't Patronize" list in the following issue of the American Federationist.

An international union is not allowed to have published the names of more than three firms at any one time.

Similar course is followed when application is made by a local union directly affiliated with the American Federation of Labor. Directly affiliated local unions are allowed the publication of but one firm at one time.

Union workingmen and workingwomen and sympathizers with labor have refused to purchase articles produced by the following firms—Labor papers please note changes from month to month and copy

Food and Kindred Products.

- Bread.—McKinney Bread Company, St. Louis, Mo.
 Cigars.—Carl Upman, of New York City; Kerbs, Wertheim & Schiffner, of New York City, manufacturers of the Henry George and Tom Moore Cigars; Rosenthal Company, New York City, manufacturers of the Bull Dugan, King Alfred, Peiper Heidseick, Joe Walcott, Big Bear, Diamond D, El Tiladde, Jack Dare, Little Alfred, Club House, Our Bob, 1105 Royal Arcanum cigars.
 Flour.—Washburn-Crosby Milling Co., Minneapolis, Minn.; Valley City Milling Co., Grand Rapids, Mich.
 Groceries.—James Butler, New York City.
 Meat.—Jones Lamb Company, Baltimore, Md.
 Tobacco.—American and Continental Tobacco Companies.

Clothing.

- Clothing.—N. Snellenberg & Co., Philadelphia, Pa.; Clothiers' Exchange, Rochester, N. Y.; Kuppenheimer & Co., Chicago, Ill.; Saks & Co., Washington, D. C.; New York City, and Indianapolis, Ind.
 Corsets.—Chicago Corset Company, manufacturers Kabo and La Marguerite Corsets.
 Gloves.—J. H. Cowrie Glove Co., Des Moines, Iowa; California Glove Co., Napa, Cal.
 Hats.—J. B. Stetson Company, Philadelphia, Pa.; E. M. Knox Company, Brooklyn, N. Y.; Henry H. Rodof & Co., Philadelphia, Pa.
 Shirts and Collars.—United Shirt and Collar Company, Troy, N. Y.; Van Zandt, Jacobs & Co., Troy, N. Y.; Chett, Peabody & Co., Troy, N. Y.; James R. Kaiser, New York City.

Printing and Publications.

- Bookbinders.—Boorum & Pease Co., Brooklyn, N. Y.
 Printing.—Hudson, Kimberley & Co., printers, of Kansas City, Mo.; W. B. Conkey & Co., publishers, Hammond, Ind.; Times, Los Angeles, Cal.; Philadelphia Inquirer, Philadelphia Bulletin.

Pottery, Glass, Stone, and Cement.

- Pottery and Brick.—Northwestern Terra Cotta Co., of Chicago, Ill.; Corning, Brick, Tile and Terra Cotta Company, Corning, N. Y.
 Cement.—Portland Peninsular Cement Company, Jackson, Mich.; Utica Hydraulic Cement and Utica Cement Mfg. Co., Utica, Ill.

Machinery and Building.

- General Hardware.—Landers, Frary & Clark, Etna Company, New Britain, Conn.; Brown & Sharpe Tool Company, Providence, R. I.; John Russell Cutlery Company, Turner's Falls, Mass.; Henry Disston & Co., Philadelphia, Pa.; New York Knife Company, Walden, N. Y.

- Iron and Steel.—Illinois Iron and Bolt Company of Carpentersville, Ill.; Lincoln Iron Works (F. R. Patch Manufacturing Company) Rutland, Vt.; Erie City Iron Works, Erie, Pa.; Singer Sewing Machine Co., Elizabeth, N. J.; Pittsburg Expanded Metal Co., Pittsburg, Pa.; American Hoist and Derrick Co., St. Paul, Minn.; Standard Sewing Machine Company, Cleveland, Ohio; Manitowoc Dry Dock Company, Manitowoc, Wis.
- 486 Stoves.—Wrought Iron Range Co., St. Louis, Mo.; United States Heater Company, Detroit, Mich.; Home Stove Works, Indianapolis, Ind.

Wood and Furniture.

- Bags.—Gulf Bag Company, New Orleans, La., branch, Bemis Brothers, St. Louis, Mo.
- Brooms and Dusters.—The Lee Broom and Duster Company of Davenport, Iowa; M. Goeller's Sons, Circleville, Ohio; Merkle-Wiley Broom Co., Paris, Ill.
- Furniture.—American Billiard Table Company, Cincinnati, Ohio; Derby Desk Co., Boston, Mass.
- Gold Beaters.—Hastings and Co., Philadelphia, Pa.; J. J. Keeley, New York City; F. W. Rauskolb, Boston, Mass.
- Lumber.—Reinle Bros. & Solomon, Baltimore, Md.; St. Paul and Tacoma Lumber Company, Tacoma, Wash.; Gray's Harbor Commercial Co., Cosmopolis, Wash.
- Leather.—Lerch Bros., Baltimore, Md.
- Pianos.—Kimball Piano Co., Chicago, Ill.; O. Wisner Piano Company, Brooklyn, N. Y.; Krell Piano Company, Cincinnati, Ohio.
- Rubber.—Lambertville Rubber Company, Lambertville, N. J.
- Wall Paper.—William Bailey & Sons, Cleveland Ohio.
- Wagons.—The Hickman-Elbert Company, Owensboro, Ky.; Owensboro Wagon Company, Owensboro, Ky.; F. A. Ames Company, Owensboro, Ky.
- Watches.—Keystone Watch Case Company, of Philadelphia, Pa.; Jos. Fahy, Brooklyn Watch Case Company, Sag Harbor; T. Zurbrugg Watch Case Company, Riverside, N. J.
- Wire Cloth.—Thos. E. Gleeson, East Newark, N. J.; Lindsay Wire Weaving Co., Collingwood, Ohio.

Miscellaneous.

- Bill Posters.—Bryan & Co., Cleveland, Ohio; A. Van Buren Co. and New York Bill Posting Co., New York City.
- Hotels.—Reddington Hotel, Wilkesbarre, Pa.
- Telegraphy.—Western Union Telegraph Company and its Messenger Service.
- D. M. Parry, Indianapolis, Ind.
- Thomas Taylor & Son, Hudson, Mass.
- C. W. Post, Manufacturer of Grape Nuts and Postum Cereal, Battle Creek, Mich.

487 SAMUEL GOMPERS (page 800) being first duly sworn testified, in substance, as follows:

Is the President of the A. F. of L., and member of its Executive Council consisting of eleven, president, eight vice presidents, treasurer and secretary.

Q. Prior to the 23rd day of December, 1907, was your attention and that of the executive council and other officers of the American Federation of Labor sharply attracted to the fact that there was a divergence of view in the courts as to the measure of restraint imposed upon labor organizations?

Mr. DARLINGTON: We enter our objection to this question, on the ground that the fact that divergence of views upon the part of courts has existed and affords no excuse for violating the decree of a court which has jurisdiction of the subject matter and the person.

Mr. PARKER: It is not afforded on that ground at all. I am only going to devote a very few questions to it.

"We are very much interested in the subject of the issuance of injunctions, particularly as they applied to disputes between employers and employees, and particularly and more emphatically to the injunctions attempting to restrain or undertaking to restrain publications and utterances to abridge or deny the right of free expression of opinion through the press and through speech."

In the Haas case from Missouri, it was held that an attempt to restrain speech and writing on the part of labor organizations was unconstitutional.

488 (It is agreed between counsel that Mr. Darlington's objection would lie all through this line of examination without the necessity of repeating it.)

A number of cases where injunction orders were issued so broad that they would prevent the publication — the position of those engaged in the strike, for instance, and an attempt to influence public sentiment by such a publication, came under the observation of witness and his associated. One decided by the highest court of Missouri, in which substantially the decision declared that no restraining order was tenable that in any way interfered with the freedom of the press, or of speech, and that any one who expressed himself in print or orally, which was either seditious, libelous or scandalous, could be made to answer; that any one who printed or uttered orally anything that was at all actionable, printed and uttered it at his peril, and could be made to respond to civil damages or criminal proceedings for a violation of law or trespass beyond the constitutional and statutory limit; and that the decision went so far as to say that because a man was poor was not a reason why he should not be permitted to express himself in print or orally, because he could not respond in damages was no reason why his right of free speech should be impaired, and that no restraining order could prevent in advance the expression of any opinion through the press or speech.

This matter was the subject of consultation of the executive council long before December 3, 1907.

489 Mr. Parker offered in evidence from page 193 of the report of the proceedings of the 25th Annual Convention of A. F. of L., held at Pittsburg, Pa., November 1905, as follows:

"Your committee, believing, upon most careful investigation, that the injunction as used in labor disputes *are* unconstitutional, recommend that resolution No. 103, introduced by delegates F. J. McNulty, William E. Kennedy and Stephen J. Fay, of the International Brotherhood of Electrical Workers, be amended as follows:

"Whereas, it is apparent to the members of organized labor that there is a decided tendency on the part of the courts by using injunctions to restrict the personal freedom of members of unions while locked out or on a strike; and

"Whereas, it is highly important to organized labor that these tendencies be resisted by a case being taken to the Supreme Court of the United States for a ruling by that tribunal; and

"Whereas, many injunctions have been issued against labor organizations involved in strikes and lock-outs in several cities of the United States; and

"Whereas, competent legal advice indicates that said injunctions are unconstitutional, and would not be upheld by the Supreme Court of the United States; therefore, be it

"Resolved, that the Executive Council investigate the injunctions now pending in the various courts and select one that they in their judgment deem of the greatest importance to organized labor, and place the same in the hands of competent attorneys to carry to the Supreme Court of the United States to test its constitutionality."

"Respectfully submitted,—

Signed by the Committee."

That resolution was referred to the executive council for consideration and action.

Mr. Parker offered in evidence from page 216 of the same report, the following:

"The sections entitled 'Legal rights of Labor', 'Exhibits', 490 'The Eight Hour Working Day', 'Child Labor', 'Chinese Exclusion from all America', and all the resolutions connected with the matter, was adopted as printed.

"The section entitled 'Injunctions, Their Use and Abuse', 'The Printers' Eight Hour Movement', and 'Women's Label League', were adopted as printed."

Mr. Parker offered in evidence from the minutes of the executive council, November 19, 1905, page 10, as follows:

"On resolution 106 it was decided that final action be deferred and President Gompers be instructed to collect such information that he can relative to injunctions and that the matter be taken up at the next meeting of the executive council."

The witness said that further action was taken under that resolution. He received a copy of an injunction from John Frye, editor of the Iron Moulders' Journal, together with a letter of transmission. That the witness, in pursuance of the resolutions, took steps to ascertain whether any existing cases presented fairly the question desired to be presented, and which the organization wanted presented to the Supreme Court of the United States. He 491 wrote to Mr. McNulty of the Electrical Workers, and to Ed Moffitt, Secretary of the Bricklayers' International Union, in-

quiring into an injunction which had been issued in a court of Boston, and to Mr. Frazier, Secretary of the International Seamen's Union, in regard to same, writing him because he was located in Boston, and might be in the best position to give the information. These letters and others not recalled were sent in compliance to such instructions of the executive council. As a result received, in some instances the proceedings in the courts, including the injunction order, and submitted them to counsel for the purpose of ascertaining whether the steps covered by the injunction and its terms, came under the instructions of the convention as contained in resolution 106, as involving constitutionality or unconstitutionality of the essence of these injunctions. In addition to advice thereon, counsel consulted advised that in the principal proceedings, defendants had waived the right of questioning the constitutionality of the injunctions, and whether the same were void, or an expansion of power not vested in the courts. T. C. Spelling made the report and witness reported to the executive council.

(Subject to objection as to incompetency, already reserved by Mr. Darlington.)

Witness read from the minutes of the executive council meeting of June, 1906, page 62, under the caption "Injunctions", as follows:

"In the matter of the injunction in labor disputes as taken up by resolution 106 of the Pittsburgh convention and discussed by the executive council at the March meeting, I submit the several injunction cases to Hon. T. C. Spelling who went through them and gave as his opinion that none of the cases contained particular points upon which decision is desired from the Supreme Court of the United States; that is, that neither of the cases presented would, if taken up on appeal, prove a test case for the determination of the question of constitutionality involved."

Mr. Parker next offered in evidence from the October, 1907, American Federationist, page 812, as follows:

"Resolved that it is the decision of the E. C. that we recommend to the affiliated unions that they contest injunctions, and it is further decided that the A. F. of L. will carry the injunction case of the Buck's Stove & Range Company against the officers and members of the A. F. of L. to the United States Supreme Court if necessary."

Report on this subject to the A. F. of L. at convention at Norfolk, November, 1907, reading from the 27th annual proceedings, page 214, being from Exhibit A. H. No. 1, as follows:

"We commend the action thus far taken by the president and executive council in taking the necessary legal steps to maintain our constitutional rights. Your committee believes it is of vital importance that this suit be fought to a successful termination, and therefore to raise an available fund for that purpose we recommend that this convention authorize the president and executive council to issue a special assessment of one cent per capita, and that the president and executive council aforesaid be further authorized to make such other and further assessments, should occasion require, as they in their judgment should deem necessary."

That report was adopted by unanimous vote.

After offer of the foregoing extract from the Report of the Executive Committee to the Norfolk Convention, counsel for respondents stated that they did not desire to be understood as withdrawing their objection to the introduction of that report in the first instance.

Mr. Darlington moved to strike out all that had been said about the report, unless respondents propose to have the report in, that they could not be permitted to offer garbled extracts from it.

Mr. PARKER: The ruling is then reserved. I suppose, you having made a motion to strike out.

493 The executive council met immediately after the Norfolk convention, or after the passage of the resolution, and took action under it. It decided to make the Puck's Stove & Range Company a test case, and if necessary, to carry it to the Supreme Court of the United States. It levied an assessment of one cent per member upon each affiliated organization, and decided further that instead of levying any further assessment, it would be better to make an appeal for voluntary contributions. Best recollection is that the levying of the one cent assessment at the meeting of the executive council at Norfolk, and that at the following meeting in January, it directed an appeal for funds should be issued in furtherance of this cause before the courts. Immediately after the temporary restraining order became effective, December 23, 1907, witness communicated locally with his associates in Washington, and later by correspondence with the remaining members of the executive council located in different cities. The order, in so far as it attempted, or seemed to attempt to restrain free speech or free press, was a very great surprise. Witness immediately took the pages of the Federationist for January, 1908, upon which the name of the Buck's Stove & Range Company appeared under the caption "We Don't Patronize," and struck through its name as printed, and made on the margin an "out" mark, and handed that to an assistant in the office, calling special attention that the name must no longer appear upon that list. Directed that he should see a copy of the list, galley proof,

and later page proof, to make sure that the Buck's Stove & Range Company was not contained thereon in any issue of the Federationist.

Consulted the attorneys then had retained, and sought and obtained the legal advice of other attorneys. Boycott of the Company by the A. F. of L., or any of its officers ended there and then, upon the moment the injunction became effective, December 23, 1907. Counsel called witness over the phone about 3:20 o'clock, on December 23rd, and informed him they had been advised, a few minutes before, the undertaking had been made. As soon as the conversation ceased, witness asked Mr. Stearns to notify, or request every employee in the office of the A. F. of L. to assemble in the typewriters' room, and see that he and all other employees were assembled there, where he desired to say something to them of important character. Within seven or eight, possibly ten minutes, he reported that they were all assembled there. Witness — their attention and informed them essentially as follows:

"Ladies and gentlemen, you know that the Buck's Stove & Range Company has sought an injunction and that Justice Gould issued an injunction a few days ago. I have just been informed by our attorneys that the courts—that a part of the injunction decree—that apart from the injunction—that a part of the injunction provided that the injunction itself would not be operative until a bond or an undertaking would be filed by the Buck's Stove & Range Company. Our counsel informs me that that undertaking has just been made or that bond given, and therefore the injunction issued by Justice Gould is effective from now on, and I want to call your attention to the fact that apart from enjoining the officers of the American Federation of Labor and our counsel and others, the agents of the American Federation of Labor and of myself and of my associates, who are the employees in this office, as well as any others who might be our agents, are included and therefore I warn you against sending out or making any disposition whatsoever of the American Federationist or of any other document in which the name of the Buck's Stove & Range Company appears. If you receive—if anything comes to your hands with the name of the Buck's Stove & Range Company upon it, I want you to be exceedingly careful and do not handle it yourself other than either turn it over to me direct or turn it over to Mr. Stearns, who will in turn turn it over to me."

The executive council having adopted the proposition that an appeal for voluntarily contributed funds should be made to carry this case through the courts, and if necessary, to the Supreme Court of the United States, necessitated the appeal to be made. Council has rarely imposed an assessment upon the organizations, perhaps not more than six or seven times in its history of over thirty years, and was disinclined to levy even the first assessment, and because of positive instruction and authority, so levied it. After discussing the matter, when the report was made as to the amount yielded, executive council believed it was better to appeal for voluntary contributions, rather than levy an assessment, which, if not paid, would involve possible separation of the organization from the Federation. Response to appeal for a voluntary contribution was a matter of their own privilege, and did not involve the separation of the organization from the Federation. As it was to be a test case, it was deemed that the funds furnished in the main should be contributed voluntarily.

Witness was directed to draft an appeal, and did. During the executive council meeting, January, 1908, witness called colleagues' attention to his editorial for the January, 1908, issue of the Federationist, which he thought would interest them, and which, if approved, might be printed separately and sent with the urgent appeal for voluntary contributions, and which would at once give to fellow workers and friends, an opportunity to knowing all the facts in their possession, and their view point of the entire procedure, and the points upon which it was proposed to test the terms of the injunction which they believed was an invasion and denial of the right of free speech and free press.

Before adjournment, galley or page proof of the editorial was handed each one there. Does not recall whether council by formal vote, or consent, or whether there was any action taken in regard to the editorial, other than he is of the opinion he received the commendation of some of them as to the article and its make-up and presentation. The appeal headed "An Urgent Appeal" was printed in pamphlet form and sent out, to secure ample voluntary contributions to defend this cause, and part to be used for the purpose

497 of attracting public attention to ills and evils of which they had been generally complaining for a series of years, and then trying to have remedied by Congress, and they were endeavoring to create a greater public interest in the presidential campaign then pending. The campaign inaugurated by the representatives of the A. F. of L. began long before 1908; in the early part of 1906, for they entered into the campaign in the first congressional district of Maine, seeking the defeat of Mr. Littlefield in Congress, because of his bitter antagonism to the bills in which they were interested, and legislation sought, so their campaign was carried on several years prior to 1908.

The purpose of the urgent appeal and editorial was to secure funds to secure by judicial decision, if necessary, at the hands of the Supreme Court of the United States, or by act of Congress, relief to which they were, and were advised they were entitled.

Took legal advice upon the editorial, as to whether it offended against the injunction, and also as to the urgent appeal. Was advised that they had a perfect right to publish the editorial, and issue it, as well as the urgent appeal. This advice was taken in advance of publication of either.

Q. How were you advised?

A. That it was not a violation of the terms of the injunction within the powers—within the rights which—no, that is not right. Just strike that out.

Mr. DARLINGTON: Let it stand as it is, with any correction he wants to make.

The WITNESS: That I had a perfect right to publish the editorial and issue it, as well as the urgent appeal.

Mr. Parker offers in evidence the entire article in the January, 1909, *Federationist*, appearing at page 53, as follows:

498

Talks on Labor.

Reception by Washington, D. C., Central Labor Union to Resident Officials of the American Federation of Labor on their Return from the Denver Convention.

After their return from the recent Denver convention of the A. F. of L., a reception was given by the Central Labor Union of Washington, D. C., to Secretary Morrison, Vice-President O'Connell, and President Samuel Gompers.

Vice-President O'Connell, Secretary Morrison, Representatives William L. Wilson and Thomas L. Nichols also made addresses.

John H. Lorch, president of the Central Labor Union, under whose auspices the reception was given, made the introductory address.

In the course of his address President Gompers said:

Mr. Chairman, Ladies and Gentlemen: I wish I could say to you "fellow-citizens," but living in the District of Columbia, you are not citizens. I am sure you will believe me when I say that I am moved beyond expression by the manifestation of your kindness, and friendliness and respect. Coming home to Washington, particularly in this last week, meant something so different from coming to Washington heretofore. The whole country had been surcharged with a peculiar atmosphere, an atmosphere hostile to the men who tried to serve you faithfully, then to come home to Washington and to find a ready, hearty, cordial and fraternal greeting of welcome, it means much more today than it might have meant a year ago.

Last year after the close of the Norfolk convention, the Washington men and women of labor prepared a demonstration that in numbers, in enthusiasm or in spirit had never been excelled, if equalled, in the District of Columbia. I well remember when the delegates witnessed that mammoth parade and demonstration, and then the gathering in convention hall which was all too small to contain the marching hosts who gathered there, it was a scene to inspire, and yet I am free to say to you, that much as it meant to myself and my colleagues upon our home coming, this meeting this evening has far greater significance.

This is a warning and an admonition to those who want to control and direct the labor movement from above, that the labor movement will remain true to itself and its men, true to each other, regardless of what effort may be put forth to divert the purposes of our organization.

There was a time when the labor movement existed by the sufferance of the powers that be. It was the effort of the Czar of Russia and his minions, only a few years ago, to control the newly born labor movement of that country. It was the effort of the rulers of Great Britain to direct the labor movement of that country in its early days, when they could not crush it.

The labor movement of the United States of America has grown into such mental maturity, that no power on earth can destroy it.

Mr. Morrison, in his remarks, called attention to the fact that an effort to placate labor by a pretended relief of the injunction process had already been offered, and that more than likely the effort would be repeated.

I call your attention to the fact that when the courts of Great Britain rendered the famous Taff-Vale decision—I suppose that first name has a familiar sound—the working people, the liberty-loving people of that country, arose in their indignation and reversed the order of the day, control by the government, and even then the constituted government sought to offer the workmen of Great Britain a bill that meant little or nothing. True to their cause and true

to their fellows, the workingmen of Great Britain spurned the effort and told the government that rather than consent to accept the makeshift measure, they preferred to postpone the day of genuine relief.

With that action on their part as our example, when administration after administration undertook to offer us a sugar-coated sawdust pill instead of the genuine article of relief, we said "we can afford to rest under injustice, we can afford to suffer, we can afford to be deprived of our rights and our liberty, but we can not afford to be recreant to our consciences and consent to legalize the riveting of chains of slavery upon us."

We rejected and opposed the proposition, and if I judge the men of labor rightly, as I believe I do, we shall reject every future attempt to legalize injustice.

When injustice is done and men of labor are made to suffer therefrom, by the gods there is some satisfaction in having the reserved right to protest. We are confronted with a situation today which is exceedingly peculiar. With my friend, "Jim" O'Connell, who does not want to go to jail, and Frank Morrison, John Mitchell, and myself, who, perhaps, will have to go to jail, it is only a difference of degree. "Jim" O'Connell is just as thoroughly enjoined as we have been—it is simply a circumstance that he has not been called upon to execute a decision which he helped to render as a member of the Executive Council and delegate to the convention of the A. F. of L.

The convention decided on a certain course and Frank Morrison and I carried it out. I do not want to discuss the injunction after the very elaborate discussion by Mr. Morrison, but I want to present one feature which he did not touch upon.

You know it is a principle in law, a principle in common sense among all English speaking people, that a man is presumed to be innocent until he is proved guilty.

It devolves upon the government, if the government charges a citizen with a criminal or any unlawful conduct, to prove this man or woman as having committed the crime.

This is the order all the way through except in the injunction case. In an injunction case you are enjoined, but if you are enjoined from doing things which are not unlawful, and you still continue to do them, the judge issues an order for you to show cause why you should not be punished. Mark you, it does not then devolve upon the court or upon the plaintiffs to prove the guilt of the accused, he must show cause why he should not be punished. In other words, the very order of the law is reversed. He must prove his innocence.

Now you know the Supreme Court of the District of Columbia has issued an injunction against the A. F. of L., its executive officers, our affiliated organizations and their members and friends and sympathizers, and agents, attorneys and counsel, and conspirators and co-conspirators and what not, and among these you are included. The court issued the injunction prohibiting us from publishing, from printing, from writing, from speaking, from whispering, that

the Van Cleave Buck's Stove and Range Company is unfair to organized labor, and for any one to publish, to print, to write a letter, or to speak of this is in violation of the terms of the injunction, yet the constitution of the United States provides that the right of freedom of speech and freedom of the press and public assemblage shall never be denied or abridged. In other words, an injunction of such a character is an invasion of the constitutionally guaranteed rights of every man and woman in this country.

I have said and I now want to repeat here, not in bravado, but in full consciousness of the responsibility with which the statement may be interpreted, that when it comes to a choice between obeying an injunction denying me the right of free speech, free expression of the thoughts that come to my mind and which are not in violation of the laws of my country, I shall have no hesitancy in standing upon my constitutional rights. We have a dispute with the Van Cleave Buck's Stove and Range Company; I have been enjoined from saying that I won't buy a Buck's stove or range, and I won't, and because I have said this in several ways, by discussion of the case editorially in the American Federationist, and Frank Morrison has sent out the American Federationist containing these things I have said, and because John Mitchell was presiding over the convention of the United Mine Workers, when a motion was placed before that body, advising the members of the Mine Workers not to buy a Buck's stove or range we have been tried for contempt—that is, we have been called upon to show cause why we should not be sent to jail, and I could not show cause.

The things I have been charged with, I did. I have not denied them. I have discussed them on the platform, as I discuss them here. I have written circulars about them. Secretary Morrison sent them out, and I ask you now to place yourself in my position. What would you do?

Besides this, I have proposed to discuss the principle involved. How is it possible to arouse the attention of the public, how can we reach the conscience of the American people, unless we call their attention to the great wrong about to be committed. I insist upon the exercise of the right of free speech. It is not given to us by any law or any constitution; it has grown with man, it is part of his very being, as is his thought. Freedom of the press is the freedom of expression through a better means than by word of mouth, and these things were written into the constitution of our country, not as a mere condescension, not as a mere complimentary thing, but as a vital reality. The right of free speech and free press mean more than a mere utterance. The dispute with the Buck's Stove and Range Company sinks into insignificance, in view of the larger and broader question involved. The first amendment to the constitution of the United States was this one of free speech, free press, and free assemblage. The experience of ages had shown why this was necessary. Man does not require a constitutional guarantee to kowtow to the powers that be. It does not require a constitutional guarantee of freedom of speech to sing paens of praise of government officials, or to tell President Roosevelt he is a good fellow.

The right is given by the constitution to say the things which displease the powers that be. I am sure the people of this country have come to learn a little more of the fundamental wrongs that are involved in the abuse of this injunction right as it is applied to the men and women of toil, and this is due to our activities in the last campaign.

I would not change my experience of the past six months to live half a life-time in addition to the years that shall be allotted to me. There is not an act that I did during that campaign that I would recall, not a word that I uttered that I would modify, not a step that I have taken I would retrace, except to implant it firmer. I endeavor, as the light is given me, with my associates, to present the rights of the masses of Labor and the wrongs from which they suffer. I charge any man, friend or opponent, to point to any utterance that needs modification from the standpoint of dignity and care and respectful consideration of the rights of others, even from men who differ from me, and there are not many—even those who differed and made a good deal of noise about it, I never uttered one disrespectful word of them.

This campaign, so far as Labor is concerned, was a clean-cut fight, and no man need blush for having participated in it.

The decision of the Supreme Court of the United States rendered in the *Hatters'* case must be kept in mind. By it all our organizations, your machinists' lodge, your carpenters' local, your printers' union, you carriage and wagon workers, you wood workers, you sheet metal workers, you waiters, cigarmakers, clothiers, you may not know it, but your organizations are trusts. The Supreme Court so decided. It decided that every labor organization comes under the operation of the Sherman anti-trust law and that each organization may be dissolved, each member sued in threefold damages that any man may claim to have suffered, and further the government may proceed to arrest any of you and send you to jail for a year and fine you \$5,000. These union men are declared trust magnates, and I am the boss trust magnate of America.

500 It is a strange attitude of mind that can take possession of such learned men as constitute the justices of the Supreme Court bench to declare that the men and women who own nothing but their power to labor, because they associate themselves for the purpose of protecting that human power, come under the same category as the steel trust, the oil trust, and other trusts. Imagine an attitude of mind that will place in the same category the organizations of the working men and women of the mills of the factories and workshops, the miners who dig coal in the mine, the man who sets type in the printing office, the man who runs a press, the man who makes your garments, that they belong to the same category of organizations as these great business trusts—one controlling the product, the other the material power to labor.

The highest court has spoken and that is law, and what are the men of labor to do. Some may say, why be so apprehensive, the government has not prosecuted many. Very true. But, if it does not, that is a mere matter of sympathy, a mere matter of judgment

or sufferance. At any time that the administrators of our federal government may feel so disposed, they can put the wheels of the Department of Justice into operation, and put the liberty and rights of every member of labor organizations in jeopardy. I do not believe that the labor organizations ought to exist merely upon the sufferance or favor of any administration, be it Republican or Democrat. In Massachusetts the Supreme Court about two months ago rendered a decision by which a strike for the union shop was made unlawful, a strike in sympathy to help other workmen was unlawful.

When the majority of a union decided that there should be a strike on a certain building, two men remained at work in spite of the overwhelming majority and the union did what every voluntary organization of the character would naturally do—that is, impose some form of punishment upon those who had violated the law of the organization. The Supreme Court has declared this fine illegal and made permanent an injunction preventing the union from enforcing it. Where is it going to stop? Our unions will exist in spite of the fact that the Supreme Court has decided they are in restraint of trade. I hope there are some men in this country who still have a conception that it is unwise to drive the workmen of our country beyond a safe line. I apprehend there are some men in authority who understand that this trade union movement of ours is a natural movement, that it is a rational movement, founded upon American conception of progress, and upon evolution not revolution. That there are men who know that this movement has done so much to bring light into the homes of our people; this labor movement of ours has found its embodiment in the heart and souls of the men of labor, and the unorganized are with us, if not in actual purpose, yet in spirit. We have them with us in the hope for the triumph of the cause of Labor. They know this and men of labor know it too.

What opportunity, except through unionism, has the working man and woman in our country in this day of trusts and corporations, in the day of concentration of industry and wealth, in the day of division and sub-division of labor and specialization of labor? What hope has the individual working man and woman in the improvement of his or her condition by acting individually? It is only by associated effort that the individuality that we have lost is regained. We made this fight in the last campaign, because an intolerable situation had arisen, and that situation has not changed, even though the election has come and gone. We ask for equal rights, equality before the law with every other man and woman in society. We ask for no special privilege, particularly for the undesirable special privilege of becoming wrongdoers.

We propose to see to it that our rights shall be accorded to us. Yes, I realize, as do most men, the necessity for protection of our material interests; but it is not alone the advance in wages for which we are struggling; it is not only the half hour more of leisure for which we are contending. The cause of Labor is the cause of justice, it is the cause of human freedom, it is the cause for which millions

and millions of men throughout the ages struggled and fought and contested and fell upon the field of battle that justice, right, and humanity shall live. The cause of Labor is not outlawed—not in the minds of all men. The supreme court of Montana rendered a unanimous decision maintaining the principles of the proposed Wilson bill and the Pearre bill.

Justice Holmes, of the Supreme Court, while a member of the supreme court of Massachusetts, in a dissenting opinion, justified the principles of the Wilson and Pearre bill. Men during the campaign flung charges and insinuations against my colleagues and myself, especially myself. I ask you, my friends, if we sought either emolument or office, do you not think we could have obtained them easier from the other side? Do you not think it would have involved less suspicion, contest, innuendo and that sort of thing?

The convention of the A. F. of L. at Denver with that unanimity of spirit, seldom witnessed in any gathering, on any field of activity throughout the world, true to its past, true to its present and the future, and to the spirit of liberty and justice, declared and recommended to the men of labor throughout the country that on the 12th day of February, 1909, they should wherever possible observe that day as a holiday in honor of and to the glory of the principles for which Abraham Lincoln lived and died.

Men of toil, may I appeal to you for the year coming and the years to come, to stand if possible more true to the banner of your union. Let union, and federation and solidarity and fraternity stand as the symbols of our movement and our goal—justice and human freedom. For your greeting, your flowers, for all things unsaid, for all you feel and for all you hope, let me reciprocate it a thousand fold, and let me express the hope that this movement of ours may continue to grow in strength, in power, in intelligence to exert its influence for the cultivation of the best thought that is in us, and to make of this republic of ours, not only the home of religious and political freedom, but of industrial liberty. In that hope, in that spirit, and with that prayer upon my lips I want to thank you a thousand fold for all your kindness and consideration.

501 This address was delivered extemporaneously. It appears as if it were stenographically taken down; he is not sure whether it is accurate. Does not know who furnished it. Did not see it until after it was published in the *Federationist*, and then did not read it as a whole. Was not directly or indirectly intended to be in furtherance or, or aid, or abet any boycott against the Buck's Stove & Range Company. Boycott against the Company ended so far as the A. F. of L., and its officers, witness included, were concerned, December 23, 1907.

Mr. Parker offered in evidence balance of article not offered by committee, appearing at page 1061 of the December, 1909, *Federationist*, the following:

502 *Summary of Injunction, Contempt, and Appeals.*

The injunction proceedings of the Buck's Stove and Range Company, of St. Louis, Mo., of which James W. Van Cleave is president,

against the A. F. of L., resolved themselves into two separate cases: one, the original injunction issued by Justice Gould of the Supreme Court of the District of Columbia; the other, the proceedings for contempt brought against Vice-President John Mitchell, Secretary Frank Morrison, and myself. An appeal was taken by the A. F. of L. on both cases. For convenience and an intelligent understanding, a brief summary of the case is here given.

Owing to the refusal of the Buck's Stove and Range Company, of St. Louis, to continue the nine hour workday to the metal polishers in its employ and its discrimination against and discharge of employees because of their membership in the union, and despite efforts to harmonize and adjust the differences existing, the labor organizations in interest of St. Louis placed the product of the Buck's Stove and Range Company upon their "We Don't Patronize" list. Application was made to the A. F. of L. at our Minneapolis convention, 1906, to endorse the action of the worker- particularly interested and place the name of the company upon the "We Don't Patronize" list of the A. F. of L.

The matter was referred by the convention to the Executive Council for the purpose of investigation and, if possible, adjustment. The Executive Council entrusted the matter to vice-president Valentine to use his best efforts in the direction indicated. At a subsequent meeting of the Executive Council vice-president Valentine reported that he had gone to the limit of his opportunities, and definitely ascertained that any effort on his part or on the part of anyone else to confer with Mr. Van Cleave upon the subject would be utterly fruitless, and though some of the then employees of the Buck's Stove and Range Company, who might be affected, were members of the Iron Molders' Union of North America, of which Mr. Valentine is president, he could not conscientiously interpose any objection to the attitude of the workers and organizations aggrieved or to the full endorsement of the application of our fellow-workers to place the Buck's Stove and Range Company upon the "We Don't Patronize" list of the A. F. of L. Thereupon, the Executive Council unanimously voted to approve the application.

On December 18, 1907, Mr. Van Cleave, president of the Buck's Stove and Range Company of St. Louis, who at the time was also president of the National Association of Manufacturers, obtained from Justice Gould, of the District of Columbia, an injunction against the A. F. of L., the members of the Executive Council, both officially and individually, the officers and members of local and international unions affiliated to the A. F. of L., its agents, friends, sympathizers, or counsel, forbidding them in any way to publish, print, write, verbally or orally communicate the fact that the Buck's Stove and Range Company was unfair to or had any dispute with organized labor, or that it was "boycotted" by organized labor. The injunction prohibited the publication of the company's name upon the "We Don't Patronize" list of the A. F. of L., directly or indirectly, and all were forbidden to state, declare, or say that there existed or had been any dispute or difference of any kind between the

company, the A. F. of L. or any of its affiliated organizations in any manner whatsoever.

Hearing was had before the temporary injunction was issued by Justice Gould. He declined later to modify it or to explain its terms. On December 18th the court issued the temporary injunction, it becoming effective December 23d when the Buck's Stove and Range Company filed its bond, approved by the court. The temporary injunction was made permanent March 26, 1908, by Justice Clabaugh of the same court.

Upon the authority of the Norfolk convention of the A. F. of L. an appeal from the injunction was taken to the Court of Appeals of the District of Columbia, our main contention being that the terms of the injunction were in violation of fundamental constitutional rights and guarantees, and that it was, therefore, invalid and void. While this appeal was pending before the court, so hasty and vindictive was Mr. James W. Van Cleave, of the Buck's Stove and Range Company, that he petitioned the court which issued the injunction to adjudge vice-president John Mitchell, secretary Morrison, and myself guilty of contempt of court and to require us to show cause why we should not be punished therefor. We were harassed for months, our counsel and witnesses being required to travel throughout large sections of the country to take testimony. Days upon days were consumed in the examination of Messrs. Mitchell, Morrison, and myself at Washington. Practically the history of the A. F. of L. printed, written or unpublished, was made part of the testimony.

The court heard argument of counsel on both sides as to whether the defendants, Mitchell, Morrison, and I, were guilty of contempt of court. And while the appeal on the original injunction was pending, Justice Wright on December 23, 1908, adjudged us guilty of contempt of court and imposed a sentence of six months, nine months, and one year's imprisonment respectively upon "Morrison, Mitchell, and Gompers."

This passing comment appears apropos. It is that an unprejudiced, impartial judge might well have deferred a decision in a contempt case alleging violation of an injunction while an appeal upon the validity of the injunction itself was pending and was being considered for decision by a higher court, and further, that the unprecedented sentences imposed were entirely in conflict with the spirit and plain provision of the constitution as being cruel and unusual.

The language and manner of Justice Wright in delivering his opinion upon the guilt of the men charged with disobeying the terms of the injunction, the fact that he had given his opinion, or permitted it to be given, out in advance, the whole mockery and formality of asking us whether we had any reasons to assign why sentence should not be pronounced, when he had determined on the sentences in advance; all these, as well as the matter and manner of the arrangement for the scene and the delivery of the opinion and sentence indicated the unfitness of the man to wear the judicial robe and occupy the judicial position.

What are the offenses for which Mitchell, Morrison, and I are sentenced to long months of imprisonment, and the ignominy of being classified as criminals? We have dared to defend our constitutional rights as men and as citizens, despite the injunction of a court which sought to invade the rights of free speech and free press secured to the Anglo-Saxon people centuries ago by Magna Charta and clinched by the adoption of the first amendment to the constitution of the United States.

And what, after all, are the grounds upon which Justice Wright held the defendants guilty of violation of the terms of the injunction? When the injunction was issued and went into effect, both temporary and permanent, we proposed to test the principles involved before the established legal tribunals. By instruction of and with authority from the Executive Council the name of the Buck's Stove and Range Company was removed from the "We Don't Patronize" list in the *American Federationist*.

Vice-president Mitchell, it was alleged, violated the injunction by allowing certain acts to be performed by the officers of the A. F. of L., and also, that while presiding at a convention of the United Mine Workers of America, a resolution, regularly introduced by a delegate, calling upon the members of that organization not to bestow their patronage upon the product of the Buck's Stove and Range Company was submitted by Mr. Mitchell to the delegates for a vote.

Secretary Morrison was charged substantially with having violated the terms of the injunction in so far as that he sent, or caused to be sent out, copies of the printed official proceedings of the previous convention of the A. F. of L. containing officers' and committee reports and resolutions of the convention relative to the Buck's Stove and Range Company's injunction and copies of the *American Federationist* containing similar references, circulars, appeals for funds, and editorials written by me on the injunction abuse.

The allegations charging me with violating the terms of the injunction were that I did, or authorized, or directed to be done, these things; because, by authority of the convention and of the Executive Council I sent to our fellow-workers and friends an appeal for funds in order that we might be in a position to defend ourselves before the courts in the very injunction case involved; because in lectures and on the public platform, during the presidential campaign I made addresses to the people giving the reasons for the vote as a citizen I was to cast at the then pending presidential election, and because I dared editorially to discuss the fundamental principles involved not only in the injunction pending, but in the entire abuse of the injunction writ. Aye, because I published in the *American Federationist* the order of the court to show cause why we should not be punished for contempt of the injunction was made part of the testimony upon which Justice Wright deemed it important to hold me guilty.

Immediately after Justice Wright declared us guilty of contempt of the injunction and imposed the sentence, notice of appeal was given and bonds furnished in the following sums: Gompers, \$5,000;

Mitchell, \$4,000, and Morrison, \$3,000, for our appearance before the court at any time when called upon.

On March 11, 1909—that is, nearly four months after Justice Wright imposed these sentences for alleged contempt of the injunction—the Court of Appeals of the District of Columbia handed down its decision upon our appeal in the original injunction. That court greatly modified the terms of the injunction, holding that no publication could be forbidden except in furtherance of a “conspiracy” to boycott.

The injunction as modified and affirmed by the court is as follows:

It is adjudged, ordered and decreed that the defendants, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O’Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, individually and as representatives of the A. F. of L., their and each of their agents, servants and confederates, be, and they hereby are, perpetually restrained and enjoined from conspiring or combining to boycott the business or product of complainant, and from threatening or declaring any boycott against said business or product, and from abetting, aiding or assisting in any such boycott, and from directly or indirectly threatening coercing or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in complainant’s product, and from printing the complainant, its business or product in the “We Don’t Patronize” or “Unfair” list of defendants in furtherance of any boycott against complainant’s business or product, and from referring, either in print or otherwise, to complainant, its business or product, as in said “We Don’t Patronize” or “Unfair” list in furtherance of any such boycott.

The costs of this appeal are equally divided between appellants and appellee.

Modified and affirmed.

The court which handed down this “modified and affirmed” decision is composed of three judges, each of whom delivered different opinions. One justice who concurred in the conclusion gave different reasons. It is difficult to read Justice Van Orsdel’s concurring opinion and reconcile it with his conclusion to affirm the injunction even in modified form. Chief Justice Shepard dissented from the conclusion of the court.

I urge upon every wage earner and every one interested in the discussion of great rights and principles involved to read the decision and opinions of the justices rendered in this case. The opinions and decision were published in the April, 1909, issue of the American Federationist.

The Court of Appeals did not take any original testimony in the case, and I am justified in saying that the judges were somewhat in error in their estimate of the actual facts in relation to the boycott of the Buck’s Stove and Range Company. This is understandable

from the fact that the A. F. of L. at no time entered a detailed defense to the allegations of the Buck's Stove and Range Company, although the charges were untrue in many important particulars.

On account of the fundamental issues of free press and free speech, which were involved in the original injunction, we preferred to stand upon the unconstitutionality of the injunction rather than obscure this great issue by going into the details of the original trouble with the Buck's Stove and Range Company.

Judge Wright's prejudiced and misleading extracts from the original testimony, and his ignoring of testimony, also tended still further to becloud the facts.

The Court of Appeals said, that the only reason the publication of the Buck's Stove and Range Company was enjoined from appearing on the "We Don't Patronize" list was because they believed that a "conspiracy" to boycott had been entered into and that "threats," intimidation and coercion had been used on innocent third parties. On this wrong assumption the modified injunction was affirmed.

It was regrettable that the court should have been so in error as to the facts of the boycott.

Even if we had been guilty of unlawful conspiracy and coercion and intimidation—which we were not—surely there should be some more adequate punishment than by a process of injunction. In fact, existing laws do provide greater punishments for these offenses, and we respectfully submit that if we are guilty of them we should be tried by the due process of law before a jury of our peers, and if found guilty punished as the law provides, rather than be subjected to the caprice of a judge who solely determines the sufficiency of the charge, the guilt of the defendant, and who imposes punishment as his whim may prompt.

It was to the Court of Appeals of the District of Columbia, the personnel of which has undergone no change since the rendering of the opinion modifying the injunction, that the appeal in the contempt proceedings was made. The argument upon the appeal against the sentences imposed by Justice Wright was made April 19-20, 1909, Hon. Alton B. Parker and Hon. J. H. Ralston making the arguments in labor's behalf.

It may be interesting to know that Justice Wright assessed "Gompers, Mitchell, and Morrison in the sum of \$1,500 as costs of the injunction proceedings against them. From this decree an appeal is also pending.

Free Speech—Free Press.

In the whole history of our movement no greater struggle has taken place than that for the preservation and the maintenance of the right of free press and free speech. As you well know, this arose under the injunction proceedings and court decisions in the case of the Buck's Stove and Range Company against the A. F. of L. December, 1907.

The technicalities of the case were soon lost sight of in the battle to preserve the great principles of human liberty which were involved.

The people of our country have with the men of labor made it clear to the whole world that no curtailment of the rights of free press and free speech will be tolerated.

The herculean efforts of the men of labor to arouse the people of the country to a realization of the danger which threatens our constitutional liberties will go down in the annals of history as one of the great crusades for the maintenance and advancement of human rights.

A complete summary of the case in all its technical and legal detail will form a portion of this report, so that it may be available as a historical record.

At the time I made my report to the convention last year, John Mitchell, Frank Morrison, and I had been cited to appear before the court and show cause why we should not be punished for contempt of the injunction because we had continued to exercise the rights of free press and free speech after they had been enjoined and forbidden by the Buck's Stove and Range Company's injunction issued by Justice Gould of the Supreme Court of the District of Columbia.

It is a matter of history and of common knowledge that on December 23, 1908, Justice Wright sentenced "Samuel Gompers, John Mitchell, and Frank Morrison" to one year, nine months, and six months imprisonment, respectively, for alleged violation of the injunction and that the decision accompanying the sentence was most virulent and unjust in its terms.

It is also a matter of the history of this year that the Court of Appeals of the District of Columbia, in May, 1909, upon our appeal, rendered a decision modifying the terms of the original injunction.

This decision was fully discussed in the *American Federationist*, April, 1909, and as the limits of this report will not permit a full review of the editorial opinions there expressed it is to be hoped that all those who are interested in the preservation of our liberties will familiarize themselves with this and other editorial matter in relation to this case which has been published in the *American Federationist* since the injunction was obtained by the Buck's Stove and Range Company.

Through efforts of our officers and members, through our own magazine, the *American Federationist*, and through the labor press, through the great mass meetings and public speeches which voiced our protest there was kindled throughout the country among all the people the spirit of liberty, the spirit of patriotism, the spirit of protest which demands that there shall be no tampering with our constitutional liberties by the courts, whether under the guise of injunction order or of prejudiced judicial decree and sentence.

I say advisedly that the whole people of our country are aroused to the seriousness of the situation. They realize that this attack upon free press and free speech among the workers is only the insidious beginning of the entire withdrawal of those rights from the whole people whenever it might suit the plans of those who desire to profit by injustice and tyranny.

The response of the masses of the people to the campaign of the

A. F. of L. for the preservation of constitutional rights shows how thoroughly our labor movement is in harmony with the spirit of liberty and the love of justice and right which makes a nation great.

The struggle is far from ended. Eternal vigilance ever was and always will be the price of the liberties of a people.

Let no one doubt my great respect for the judiciary of our country; I have confidence in their integrity, no matter what their decision, still they are human beings and as such liable to err. I say this with respect not only to the three justices of the District Court of Appeals, but with reference to the judiciary generally.

Court of Appeals' Decision.

It was generally expected that the Court of Appeals of the District of Columbia would hand down its decision early in October, 1909. Indeed, it was to meet the issue, whatever it might be, that I was careful to be within the jurisdiction of the court when the decision would be handed down. The decision was rendered Tuesday, November 2d—that is, on election day throughout the country. The court stood two to one in affirming Justice Wright's decision and sentences of one year, nine months, and six months imprisonment for "Gompers, Mitchell and Morrison," respectively, on the ground that they had violated the terms of Justice Gould's injunction. Chief Justice Shepard dissented from the decision and opinion of the court, and declared that Justice Wright's decision and sentences should be reversed, on the ground that he issued an order entirely beyond the power vested in him, and that the order was therefore void.

Concretely stated, the decision of the court declares that no matter whether the injunction of Justice Gould was right or wrong, valid or void, we were compelled to obey. Against that concept, at least for myself, I enter a most emphatic protest. When a judge so far transcends his authority, and assumes functions entirely beyond his power and jurisdiction, when a judge will set himself up as the highest authority in the land, invading constitutionally guaranteed rights of citizens, when a judge will go so far in opinion, decision, and action, that even judges of the Court of Appeals have felt called upon to characterize his action "unwarranted" and "foolish," under such circumstances it is the duty of the citizen to refuse obedience and to take whatever consequences may ensue.

It is common knowledge that a judge has issued an injunction against municipal officers enjoining them from performing their duties in the enactment of laws. Assume that a judge will so far forget himself as to issue an injunction prohibiting a legislature, or Congress itself, from enacting laws. Will it be contended that obedience must follow? Let a judge issue an injunction enjoining the President of the United States from performing the duties of his office. Does it follow that the Chief Executive of our nation must yield obedience, and perhaps thereby fail to perform the duties of his great office, to the injury of the people of the country? Were the matter involved merely material, or of such a character that time

would not destroy, the situation would be vastly different. All realize that for the orderly continuance and development of civilized society, obedience to the orders of the court is necessary, and to that there would be no dissenting voice.

I repeat and emphasize this fact, that the doctrine that the citizen must yield obedience to every order of the court, notwithstanding that order transcends inherent, natural, human rights guaranteed by the constitution of our country, is vicious and repugnant to liberty and human freedom, and that it is the duty, the imperative duty, to protest.

The history of the human race has been full of tyranny and the denial to the people of the right of expressing freely by speech or in the press their opinions. After our people established a government they recalled that they had omitted to safeguard this vital right in framing our constitution. Therefore, the first amendment to that instrument was that guaranteeing the right of freedom of speech and press.

That means something. We do not need this right to please those entrusted with the authority of government. Free press and free speech were guaranteed that men might feel free to say things that displeased. Demand for reform coming from the people is generally distasteful to those entrenched in power and privilege.

It was not necessary that we be given the privilege for the purpose of singing the praises of the powers that be. No Russian needs constitutional guarantee of the right to sing the praises of the czar.

We must have the right to freely speak and print for the wrongs that need resistance and the cause that needs assistance.

There is no persecution, no injustice, to a great movement but if met in the right spirit bears its harvest of good. In this case the tremendous popular indignation at the attempt to abolish the right of free press and free speech brings our union members into closer relations and more in sympathy with each other throughout the country, and, more than that, it brings to the attention of the people as a whole the noble aspirations and the splendid achievements of the labor movement in behalf of right, justice, and humanity.

Out of this attempt to seal the lips of the men of labor I believe will come good.

We know that the people of our country and the labor movement will be found united in patriotic protest against any curtailment of the liberties for which our forefathers struggled in order that we might be free.

506 We have come too far in the march of human progress for any set of influences to drive us back into slavery.

I see a silver lining to the clouds and a bright star of hope in the heavens, and I see ultimately the spirit of humanity, justice, and the brotherhood of man obtaining in the minds and hearts of the people of the country. Like Jefferson, I am willing to trust the people, and I have a certainty of their final triumph.

Legislation—Anti-trust Law—Injunction.

Congress has thus far failed to pass any amendment to the Sherman Anti-Trust Law relieving the labor organizations from the operations of that law as interpreted by the Supreme Court of the United States in the suit of Loewe & Co., hat manufacturers of Danbury, Conn., against the United Hatters of North America for threefold damages claimed by Loewe—that is, \$240,000. Though it is true that since this decision has been rendered but few suits have been instituted against organized labor under the provisions of the new interpretation placed upon the law, yet it is also true that every labor organization and every individual member of the organization are menaced by the present status.

Now any action taken by our voluntary organizations of labor for the protection and the furtherance of the interests of the workers makes them amenable to the law with its penalties of imprisonment and threefold damages which anyone may allege he has suffered by reason of a strike by them withholding their labor from employers or their patronage from business men.

There are different contentions as to what Congress had in mind when the Sherman Anti-Trust Law was enacted. From the assurances given the representatives of labor and the declarations made upon the floor of Congress at the time when the bill, now a law, was under consideration, the workers were justified in believing that the Sherman Anti-Trust Law was the result of an aroused indignation among the people against the combinations of great corporations which prey upon the public. And that, as the very title of the bill conveys it is a law contemplated to reach, regulate, and deal with the trusts whose operations are not with labor, but with the products of labor; that as the organizations of the working people concerned themselves, not with the labor products, but with human beings, the law ought not and could not properly have application to them. But the Supreme Court of the United States has decided that the law applies to the workers' organization instituted for their own physical and moral protection and advancement, and from that decision there is but one appeal—to the people of our country.

The Sherman Anti-Trust Law is not what it is now superficially supposed to be, but is, indeed, a re-establishment of the oldest laws proclaimed by tyrants more than a thousand years ago—laws which had for their effect the prohibition of associations and organizations of the people of whatsoever kind.

The Sherman Anti-Trust Law, as it now exists, may more appropriately be styled an anti-coalition law. Under the anti-coalition laws of the dim, distant past every association or organization of the people was disrupted and disbanded; their liberties were destroyed, and ignorance, darkness, misery, and demoralization enveloped the people for a thousand years; a period when the arts, the sciences, industry, and progress were strangled and inanimate, when but one in every 500 of the people could either read or write.

Take away the right and opportunity of the workers, the masses of the people, to associate themselves for their common protection against oppression, whether by king or industrial potentate; curb

the power of the workers, the people, for effective protest, and a new era of blighted life will have been inaugurated. Against the possibility of such a condition of affairs America's workers must not only protest, but they must make that protest effective and complete.

There is no factor in all our public life so potent to maintain and perpetuate the liberties of the people as a well organized movement of the workers.

In all times and under all forms of government, wherever slavery existed, the workers were the slave class. Other portions of society may have been deprived of rights and liberties, but only in degree and in proportion as the workers were driven into the form of slavery. And particularly under modern industrial conditions with wealth concentration, if from the workers is filched by government the right to associate peacefully and voluntarily and in their association and organization to exercise the natural, normal functions of such organizations to protect their rights and interests against greed, avarice, and overbearing tyranny, then the first elements of slavery have been injected into our lives and future.

The rights and the liberties of the people have never been, and will never be, taken from them with one fell swoop. Oppressors are more adroit. The invasion of rights is gradual, and by specious assurances the people are often lulled into a fancied security only to find themselves enmeshed, circumscribed, and almost crushed, requiring ages of struggle and travail for their awakening and their rehabilitation.

Today our wage-workers' organizations' existence, legally considered, is by the sufferance of the powers that be. Such a condition of affairs is intolerable.

It has been and is the aim of the American labor movement to be in fullest accord with the American concept of gradual, rational progress and development, and by natural evolutionary process peacefully to work out labor's emancipation. For one, I feel assured that we shall secure both by law and by the public conscience the full lawful right to carry on the work and the necessary functions of our organizations as time, industry, and conditions afford. Of one fact I am fully persuaded, and have no hesitancy in asserting, it is that the labor organizations of America will live, be maintained, grow, toil, and struggle for the amelioration of the conditions of the workers, the improvement of their standard of life and citizenship, and to work out their salvation for a higher and better manhood, womanhood, and childhood, all the bitter antagonistic elements to them to the contrary notwithstanding. Rapacity, greed, tyranny, and ignorance can not and will not subjugate or enslave America's workers.

In order that all the blessings of civilization may keep pace with industrial development the toilers of the United States have
507 repeatedly urged Congress and the state legislative bodies to grant certain specific remedial economic reforms which the toilers are unable to obtain in any other way than by legislation at the hands of the representatives of the people.

If the wage-earners could have obtained these reforms through the regular channels of economic force as expressed in their trade organizations or in any other way by their own efforts, relief and protection would have been successfully secured years ago.

In response to the instructions of the Norfolk and Denver conventions legislative measures were presented to the 60th Congress, asking for relief from the exactions of the so-called Sherman Anti-Trust Law, but that Congress adjourned without daring to assert its own power, even after an overwhelming majority of its members had individually pledged themselves in favor of the measure, which after much deliberation was prepared and which was introduced by the Hon. William B. Wilson, member of the United Mine Workers, and representative of the 15th Congressional District of Pennsylvania. That bill, known as H. R. 20584, did not ask for, nor would it have added, any special privilege to laborers' or farmers' organizations. There was no semblance of class legislation in this proposed measure when fairly and honestly analyzed. Its purpose was and is to carry out the premeditated and emphatically expressed intent of the framers of the original Sherman Anti-Trust Law. The mental giants who debated that measure in its course through the United States Senate were better informed in modern economics than to confuse property rights with human rights, and they almost unanimously agreed that no court in the land would ever construe a law designed to curb grad-grinds and money-mongers into a scheme to persecute the wealth producers, the bread winners of the nation.

When the representative government of the United States was demanded by the colonists and established, it had for its basis the government of, by and for the people, they having their respective property and property rights. In its very concept and declaration of independence, it placed first, and recognized, man above the products of man. It had for its purpose the affirmation and maintenance for all time of the rights of living, breathing, liberty-loving man. The decision of the United States Supreme Court has affirmed that in the law as it now stands, there is no distinction between the combinations formed for the manipulation, control, and sale of the products of human labor and the voluntary organizations of the working people formed for the protection and advancement of the physical, material, moral, and social welfare of the masses of the people.

It would seem that the Congress of the United States, the representatives of the people, would have afforded the relief from the onerous conditions brought about by the Supreme Court decision. If the 60th Congress had possessed in the slightest degree the conception of its duties, if it had observed the commonest rules of legislative independence and the simplest methods of self-assertive honesty, it would not have permitted the first session to dally its time away while one man (Mr. Charles E. Littlefield) went through the questionable farce of "subcommittee hearings" on the merits and demerits of the Wilson bill. When that gentleman became thoroughly saturated with the grim humor of his transparent hold-up scheme, he resigned his seat in the House in the middle of the term without sufficient respect for the judiciary committee, which he was presumed to rep-

resent, even to make a formal report to it. In the second session of the 60th Congress, Mr. Charles Q. Tirrell, of the Fourth Massachusetts Congressional District, who succeeded Mr. Littlefield as chairman of the subcommittee of the judiciary committee, having charge of such measures, played a game of battledore and shuttlecock with Mr. John L. Jenkins, chairman of the full committee. Together they contrived so to shift the responsibility (under the plausible guise of parliamentary courtesy), that they effectively denied your Executive Council and myself an opportunity to make a brief statement in order to have a complete record on the subject in the printed hearings before the committee.

For full details concerning this peculiar parliamentary transaction, I refer you to the legislative committee's report on page 375, *American Federationist* for April, 1909, and I urge every delegate and all others interested to again read it and bring it to the attention of every organization and every citizen of every congressional constituency. In connection therewith should be read the report of labor's legislative committee published in the August, 1908, issue of the *American Federationist* under the heading "Congress and Labor."

This illustration is a glaring example of how to avoid duty and responsibility, and is merely one instance of the subserviency of Congress to the absolute will of its dictator, Speaker Cannon. He is the potential instrument of every predatory interest that infests the halls of Congress, whose tactics are and whose motto should read: "They shall take who have the power, and they shall keep who can."

In connection with the present status of the Sherman Anti-Trust Law, the Executive Council had an extended conference with the president of the United States and had the opportunity of fully discussing the subject with him. He freely expressed his judgment that the law required change, particularly for definiteness to accomplish the purposes for which the law was enacted, and he suggested that he would be pleased to confer later with any representative of the Executive Council and also with Judge Parker, our attorney. Later, by direction of the Executive Council, I had an extended interview with the President and the subject-matter was again discussed. Then I had an interview with Judge Parker, and conveyed to him the President's suggestion, to which he gladly assented. The following letter in connection with the matter is of interest:

BLACKPOOL, ENGLAND, *July 1, 1909.*

To the Honorable William H. Taft, President of the United States,
Washington, D. C., U. S. A.

SIR: When I had the honor of an interview with you in Washington, in June, you suggested that when you had discussed with the members of your cabinet the subject of the amendment of the Sherman Anti-Trust Law, and particularly in reference to its present application to the labor organizations, that a conference with the Honorable Alton B. Parker would be agreeable to you.

I left Washington within two days after our interview for New York, and brought the matter to Judge Parker's attention. He ex-

508 pressed himself as in entire accord with the suggestion, and authorized me to say that he would be glad to call upon you at any time and place when so advised by you.

The few days I had in New York prior to my departure for this side of the Atlantic on June 19th were so taken up by a meeting of the Executive Council of the A. F. of L. that I could not get to write to you in regard to this matter. Then, again, I was aware that there existed no necessity for immediate haste. I take great pleasure, however, in communicating the above to you at this, my earliest opportunity. I have the honor to remain,

Yours very respectfully,

SAMUEL GOMPERS,
President A. F. of L.

A copy of this letter was sent to Judge Parker. Though the interview has thus far not taken place there is no doubt that it will in the very near future.

Injunctions.

We asked the 60th Congress for relief from the abuse and misuse of the writ of injunction: we asked for a restoration of the ancient and cherished right of a trial by a jury, so that the people may be safeguarded from the absolutism of judicial tyranny; but in spite of all hitherto accepted rules of procedure and of evidence, one man, a judge, presiding in an equity court may disregard all such established methods and absolutely set his own opinion as a finality, in spite of the fact that no written statute in this or any other land grants him such extraordinary authority.

Instead of the beneficent injunction writ being a safeguard of human liberty as it was originally intended, it has been so wilfully perverted that it has been made an instrument of coercion and tyranny and is wielded for the sole purpose of those who not only possess wealth but arrogate power never legally granted or intended in order to hold and keep the men of labor and the masses of the people in awe and subjection.

The American people have fondly nursed the sentiment in their hearts that the government of our Republic was founded upon the inherent principles of justice and right, and that these righteous principles are adhered to by their representatives; but such chicanery as this record shows should arouse every citizen in the land to a sufficient sense of the danger that threatens the very life of a free government that a renewed public energy and vigilance should and must be exerted to correct existing evils.

To do this the A. F. of L. and all its members should bend their efforts and take the lead. No men are more loyal to the fundamental institutions of our Republic or more jealous of their maintenance than those who are enrolled in the American labor movement; to foster and spread the growth of intelligence, to instil character, to improve and elevate the general standard of life among all our people, to cultivate a sterling manhood and self-reliant spirit, and to establish a recognition of the interdependence of one man with

his fellows are some of the praiseworthy purposes of our unions, and we have faith that all liberty loving, clean-thinking American citizens will not only extend us their sympathy but will in every honorable and lawful way possible, actively assist us in securing these justifiable and commendable results.

The congressional record heretofore given on the Wilson bill, H. R. 20,584, for the purpose of restoring to the workers the rights which were so summarily taken from them by the United States Supreme Court is so identical to that on the Pearre Anti-Injunction Bill, H. R. 94, that it would be tedious to repeat it, but a word on another phase of the situation is very essential as a warning to many of our zealous members, especially those of our members who are officials in central labor unions, state federations, or national and international organizations.

During the life of the 60th Congress it almost became a fad to introduce a bill, ostensibly to regulate the issuance of injunctions and restraining orders, limiting the meaning of "conspiracy" in certain cases, authorizing the right of trial by jury in contempt cases, direct or indirect, change of venue, etc., etc.

The number of such bills introduced was legion; they became so numerous, in fact, that our legislative committee dubbed them "life savers." They were invariably introduced by members for the purpose of popularity among their constituents, who are members of labor organizations and others whose love of justice is still alive. In a few cases there was a spasmodic effort by the member introducing it to make it appear there was going to be some genuine consideration given it; but in the majority of instances such bills were merely introduced and printed copies franked to constituents at home—for a purpose.

There were other instances where members, usually first-termers, drafted an "anti-injunction bill" and endorsements from the organizations in their district were solicited purely on the strength of the title of the bill and not because of the merits or efficiency of the bill itself.

These tactics are already in evidence preparatory to the regular session of the 61st Congress, and it is a fact that already some of these spurious drafts of so-called "anti-injunction bills" have been unsuspectingly favored by certain organizations. To all of such I strongly advise that no endorsements be given to any bill "anti-injunction," or other subject affecting vital fundamental rights and principles unless it has been given the approval of the A. F. of L., or in the interim of conventions, the Executive Council. A word to the wise should be sufficient.

Congressman Wilson, of Pennsylvania, has introduced a bill, H. R. 3058, which has been approved by the Executive Council and which clearly covers the issues we are making.

During the last year it has been observed that the agitation against the wilful misuse of injunction orders in labor disputes is bearing fruit.

In August, Judge Baker of the United States Circuit Court in Indiana refused to grant a petition made by the American Sheet

and Tin Plate Company against the Amalgamated Association of Iron, Steel, and Tin Workers. Another judge, in Newcastle, Pa., refused to enjoin picketing and peaceable persuasion on petition of the same company. Even in Judge Alston G. Dayton's United States Circuit Court of West Virginia, there is a tendency to be less sweeping, and he does not draw the line on "inducing or persuading" as on former occasions.

In state courts there is a noticeable reluctance to go to the extremes they formerly did. What must be most vigilantly guarded against now is the legalizing of the injunction process in industrial disputes when they would not be issued where no industrial dispute existed. Labor men must now more than ever be alert and ever active and absolutely loyal to their own best interests.

509 With regard to the other subjects of legislation considered by the Denver convention, the legislative committee made its report which was duly published in the April issue of the American Federationist. I commend it to your careful consideration. It is advisable, however, to make additional special reference to some of the subjects in which we are particularly interested.

510 It was not intended by this report, or any part of it to contribute, in any degree, whatever toward aiding, assisting or abetting a boycott against the Buck's Stove & Range Company. It was written for the purpose of reporting the accurate history of the continuity of the proceedings in this case, the progress made in regard to it, steps taken to carry out the original instruction relative to testing principles involved before the courts of the country.

The reports of the executive council to the convention 1907 (appearing in this report on pages 486 and 487) was before the issuance of the temporary injunction by Justice Gould, so also as the minutes on pages 489 and 490 of these proceedings. (Extracts from reports of the executive council to the convention of 1907) these extracts, four paragraphs in all, presented their understanding of the issue offered by the pleadings in the case of the Buck's Stove & Range Company against the A. F. of L., and which they gladly welcomed. When the first papers were served upon them, it appealed to their attorneys as being a cause in which the principles under which they sought to obtain a definite decision by the highest courts of the country, were involved and developed. They welcomed the proceedings to carry out their purposes, and the purposes of the A. F. of L., as contained in resolution 106 of the convention of two years before. The matter had been held in abeyance for a little more than a year, as there was no case presented in which they could take hold of and make a test case. When these papers

511 were served, their counsel first saw and brought to their attention the fact that in this cause were to be presented the opportunity of making a test before the courts, and witness and his associates gladly welcomed the proceedings. The extracts represented their views under the advice received, and which they regarded as sound, but in witness's opinion, for a general understand-

ing of the subject, the whole matter should be made a part of the record.

Witness reads from the report of the executive council to the Toronto Convention of 1909, as follows:

The original injunction not only prohibited the publication of the Buck's Stove and Range Company in the "We Don't Patronize List" of the American Federation of Labor, but also enjoined the right of free press and free speech, forbidding any reference whatever to the Buck's Stove and Range Company, either oral or printed, and prohibiting the publication and mailing of the American Federationist or any other printed or written matter containing any reference to the Buck's Stove and Range controversy. The discussion of the injunction itself and the principle upon which it was based, were prohibited by the very terms of the order.

It will be remembered that the American Federation of Labor immediately complied with the original injunction issued December 18, 1907, which became operative December 23, 1907, to the extent of removing the Buck's Stove and Range Company from the "We Don't Patronize List." Editorially and by speech and circulars and in convention the officers of the American Federation of Labor, however, continued to protest against the deprivation by injunction of the constitutional liberties of free press and free speech.

President Gompers, Vice-President Mitchell and Secretary Morrison, upon the petition of the Buck's Stove and Range Company, were subsequently required to show cause why they should not be punished for alleged contempt of the court, because they had exercised these rights, and on December 23, 1908, were sentenced by Justice Wright to imprisonment for twelve, nine and six months respectively.

512 Witness says that the report was not written with the remotest intent on his part to aid, assist, or abet the alleged boycott against the Buck's Stove and Range Company.

The Federationist of April, 1908, was first distributed about the 23rd or 24th of March, the rule in the printing office being that some time the early part of the 24th, unless a holiday intervened, copies of the Federationist should be placed on his desk, and there was no holiday in March after the 17th. The distribution takes place after the copies are put on witness's desk, that is about March 24th. Witness's attention was invited to the official circulars printed in the American Federationist of April, 1908, on page 295, offered in evidence in these proceedings on pages 521 to 525, and stated that that article, or any part of it, was not written with the thought in mind that it would aid, assist, or abet the alleged boycott against the Buck's Stove and Range Company. It was one of the class of circulars witness usually had issued in the early part of each year, containing some of the important directions, or instructions, or actions of the previous convention. The circular deals with a number of things. Witness enumerating from the circular investigation relative to evasion and disregard of laws and ordinances relative to protection of human life of men engaged in constructive work on buildings, and preparation of a uniform bill for protection of human

life and limb; further investigation as to casualty companies, and whether they are engaged in operations tending to defeat the ends of justice, etc., and reports thereon; furthermore, demands to more thoroughly organize unorganized workers, and resistance of wage reductions, and demands for congressional and legislative relief for wrongs. Injunction not compelling labor, or labor's friends to buy product of the Van Cleave Buck's Stove and Range Company. Admonition to workers to be true and helpful, and unitedly work in the cause of right and justice.

Referring to short editorial from the American Federationist of April, 1908, page 279, reciting that the temporary injunction had been made permanent, the witness stated that it contained information of the character of the proceedings, and had no more relation to boycott then, or subsequently, than the relation of a divorced husband and wife, and was not published for the purpose of aiding, assisting, or abetting an alleged boycott against the Buck's Stove & Range Company, but printed as a statement of fact, and to give the information to all who were interested in the proceedings before the court. The editorial "It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor, to buy a Buck's stove or range" was not published for the purpose of aiding a boycott. There was no longer a boycott of the company in existence. It was the statement of a legal fact as understood by a layman.

Mr. Parker offered in evidence the following extract from the Federationist for May, 1908, page 382:

514 I suppose that accurately states the attitude of your organization?

Mr. GOMPERS: Yes, sir; but that is not one of the fundamental principles.

The CHAIRMAN: Well, your constitution provides for the prosecution of boycotts, does it not?

Mr. GOMPERS: No, sir.

The CHAIRMAN: But this petition, signed by the American Federation of Labor, Samuel Gompers and Frank Morrison, by T. C. Spelling, attorney, says: 'First, that the constitution of said American Federation of Labor, petitioner, makes special provision for the prosecution of boycotts.' I know nothing about it except what I see here.

Mr. GOMPERS: The constitution makes provision for the selection of a committee on boycotts, and also regulates the manner, or rather restricts the number of boycotts which an organization can apply for endorsements, and it also restricts the central bodies from endorsing certain boycotts.

Your questions make it necessary for me to say just a word more, if I may.

The CHAIRMAN: Certainly.

Mr. GOMPERS: You must bear in mind that in the case in point, the Hatters, their organization has had a continuous history. There has been a continuous history of the organized hatters for over 500

years. From the old-time Guilds they have their records. There is that esprit de corps, there is that feeling of mutuality, of the old-time chapel, as it was and is called in the printing trade, which also obtains among the hatters. They have had and have agreements with 70 of the largest hat manufacturers in America. They meet every year and agree upon wages, hours, and conditions of employment. They got into a dispute with Mr. Loewe; the merits of it I shall not attempt to discuss. But they contended for conditions of employment, conditions of labor, wages, etc., whatever they were, which obtained throughout the trade among the workmen employed in the other factories. To these Mr. Loewe objected. They came to a disagreement. Whatever the merits were, or the demerits were, I shall not attempt to discuss, but they came to a disagreement. It was necessary that the men in the trade—the hatters—must fight in order to maintain that scale of wages. Otherwise how could they expect these other 70 manufacturers to pay the scale, to pay decent wages which would give the men an American standard of living. It was a matter of self-defense. They had to fight. They will fight, and I will help them to fight if I can. Any set of workmen or workwomen in this country who want help in protecting their interests or advancing their rights, I shall, so long as life remains in me, try to help them to the very best of whatever little ability I may have; and whatever that may involve, too. And I want to say that in my 58 years of life I have been a law-abiding citizen. There is no man who can ever point to any act in my whole life that reflects to my discredit as a man and as a citizen. I want to assure you on my word of honor that so long as I live I will never buy a Loewe hat or a Buck's stove or range until these gentlemen come into agreement with organized labor and grant us conditions of fairness. Then they will get support and help. Until then, you may call it by any other name—boycott or no boycott—but I won't buy your hats anyhow."

515 Witness says the foregoing was taken from the editorial under caption "Labor and the Anti-Trust Law," dealing extensively with an argument he made before the Judiciary Committee of the House of Representatives, upon a bill in which they sought relief from the Sherman Anti-Trust Law, as interpreted, and relief from the injunction process about which they had cause to complain. It was in part a colloquy between committee members and chairman and witness. The argument and colloquy which ensued appeared almost entirely in the body of the editorial, and the sentence offered by the Committee, was taken from a statement of witness in response to a remark of the chairman, which sentence was not uttered for the purpose of aiding, assisting, or abetting an alleged boycott against the Buck's Stove and Range Company, and witness had no such intent or purpose in publishing the editorial and dialogue, but his purpose was to show to the men of labor and the public in general, efforts which were being made to secure desired relief at the hands of Congress.

Mr. Parker offered in evidence article entitled "Talks on Labor" in the American Federationist of June 1908, page 467, as follows:

An Address Delivered at Chicago on May 1, by Samuel Gompers, on Labor Legislation Demanded from Congress and Recent Supreme Court Decisions as Affecting Organized Labor.

The situation in which the working people of our country find themselves at this time is not only a subject of concern to them, and to the people of our time, but it affects the very fundamental principles upon which our republic is based. I hold it as an axiom, that you can not deprive a certain portion of our people or of any people of a country of their rights without at the same time impairing the very essential of free government. As soon as the first attempt is made to deny and deprive a certain portion of our people of their rights and their liberties, you immediately set in motion the force that makes for the down-fall of progressive institutions.

Ours is not the first republic in the world. There are older republics now in existence. There was that great republic of Rome, which went into decay. There are some who imagine that the republic of Rome went by the board over night, that it was simply swept out of existence like a thunderbolt from a clear sky. In truth, for many and many years the process of disintegration went on; first, in the denial of a certain liberty or right to a certain portion of the people, and the granting of privileges and franchises to another portion of the people—for it is in the nature of things that as soon as the denial of rights is proceeded with in the one instance it is accompanied by the bestowal of extra privileges upon another class. So, by filching the liberties of the people, one by one; tranquilizing one and trying to satisfy others—by this process the very essentials of liberty, character, independence, thoughtfulness and manfulness were taken out of the hearts of the Roman people until a mere shell of the republic existed. The people of Rome no longer had any interest in the maintenance or the perpetuation of what was then called a republic. There was no incentive for its defense in the hearts and minds of the people, and, hence, no wonder that it fell an easy prey to a handful of invading barbarians.

So, I ask you, men and women of toil, and you, men and women in other vocations of life, to look around you and see what is transpiring. Is it not enough to cause us to pause and ask ourselves whether are we drifting? The courts are denying to the toilers the privileges—no, no; not privileges; the rights which are inherently and naturally theirs.

Legislatures, municipal, state, and nation, are granting franchises and privileges and immunities to the wealth possessors, to the few, and denying to the great mass of the people their God-given right to such protection as will make for the welfare and progress of this nation, state, and municipality.

Rights? Yes, there is no hesitancy on the part of our courts to grant us certain rights—for instance, the right to be maimed or killed without any responsibility to the employer; the right to be discharged for belonging to a union of labor; the right to work as long hours and for as low wages as the employer can impose upon

the working man or woman. These rights—these academic rights, which we do not want—are freely conceded, but there is the denial to us of the rights which are essential to our welfare.

I am going to ask the ladies and gentlemen who, living in the year of about 1890 and a few years before, had an opportunity of knowing the state of mind of the people of our country, whether they do not remember the agitation that went on upon the subject of trusts and the combinations of wealth. To you, then, I appeal, whether it was not true at that period the people were alarmed at the great strides of the modern corporations. Corporations that by reason, perhaps, of their mute development, unrestricted and unchecked by any sort of power, were throttling the people, were preying upon them and their vital interests until, from one end to the other of our country, there went forth a demand that the trusts must be controlled and curbed.

I ask any man or woman within the range of my voice whether during that period they ever heard one word, or any reference at all, suggesting that the organizations of the men and women who worked for wages should be included in a law for controlling and curbing trusts?

The very suggestion is repugnant to the ideas and the notions which obtained at that time. In 1890 and since that time a law known as the Sherman anti-trust law has been in existence. Under the decision of the Supreme Court of the United States, recently rendered in the case of the hatters—that is, this Loewe Hat Company, of Danbury, Conn., against Martin Lawler and others of the hatters' union—no one doubted but the Supreme Court of the United States would decide that the labor organizations and the labor men could not and ought not to have been included under the Sherman anti-trust law.

I might say just parenthetically about the Hatters' case that you are not now permitted to boycott the Loewe hats, but I want
517 to call your attention to the fact that there is no law compelling you to wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. That applies equally to Mr. Van Cleave's stoves and ranges. And, by the way, I don't know why you should buy any of that sort of stuff. I won't; but that is a matter to which we can refer more particularly in our organizations. We do not want to take up the time of this meeting by a discussion of that sort of thing.

The Supreme Court of the United States held that the Hatters' Union of Danbury, Conn., can be sued in threefold damages by this employer, Loewe, who claims he suffered a loss of \$240,000. That does not make much difference to a few hatters, or a few printers, or a few men in the building trades—a mere bagatelle of \$240,000—because we can easily pool our issues and make up that amount, but these men are also in danger of being prosecuted and sent to jail for any term not exceeding a year and to be fined the sum of \$5,000 each.

Apart from the fact that this decision applies to the hatters, it also applies to every man and woman who belongs to a labor organization. I have heard it claimed several times since the decision has

been rendered that it does not affect the labor organizations. My friends, I think it is in Shakespeare's "Merchant of Venice" where Shylock makes the remark, "You might as well take from me my life as take from me the means whereby I live." Under this decision of the Supreme Court and under its other decisions rendered in the recent past, they might as well dissolve and destroy the organizations of labor as to enforce these decisions.

Let me say that it were better that they do not attempt to enforce these decisions. After all, there is a spirit of justice inherent in the breast of every man, this spirit is not confined to the union men alone, but deep down in the hearts of the men and women of our country is that innate desire for justice which resents any attempt to deprive the organizations of labor and men of labor of their rights and the exercise of their normal activities.

I ask, what do they expect would occur should some of the Van Cleave spirit, the Post spirit, and the Parry spirit obtain as interpreted by the courts? If such a spirit could obtain, can you imagine a condition of affairs in our country without the labor organizations? Can you imagine what the condition of the working people of our country would be? Why, don't you see even as to Congress, organized labor acts as a check upon the legislation, which would take away the rights of the people.

Where is there the power or the men—not simply bayonets and guns—but the power in the hearts and in the minds and in the consciences of our people to check the greed of power and tyranny exercised by concentrated wealth, if it is not checked by organized labor?

Can you for a moment imagine, I ask you, what the conditions might possibly be if there were no organizations of labor? There would be wealth concentrated in the hands of the few. There would be power concentrated in the hands of the few, unchecked and unrestricted; no organization of the workers; nothing to stand in the way of the most arrogant exercise of the will and the power and tyranny and greed of wealth. I ask you what would the conditions of the toiling masses of our country be? What would our republic resemble?

I sometimes try, in thinking of such a situation, to give my mind a wide range of possibilities, and I fully believe, if such a situation were possible, there would exist anarchy and chaos, instead of there being as now, a well-defined, orderly-conducted, intelligent mass of the working people of our country, organized, discussing in the most intelligent manner the great interests which are involved in their daily lives, in the home; considering what promotes their interests. We have free discussion in our unions, also in our central labor bodies and in our international unions and in the American Federation of Labor, and through our various journals and through the labor press we have the discussion upon this platform on a Sunday afternoon, free for every man and woman to come here and hear what we have to say—this is the labor movement of today.

Make this labor movement, which I have just now but faintly portrayed, impossible, and what then? Does there anyone imagine that the American working people are going upon their bended knees to beg for mercy or consideration from those who have robbed

them? That might have been had our great-great-grand parents not been given the opportunity of learning the alphabet.

Some say that the best manner in which to produce the perfect man and woman is to begin with the grand parents; so we say that the attempt to deprive the American workingmen of their liberties is begun too late. Those that have gone before us have learned the alphabet and the combination of letters; and we find that certain letters spell "man;" others "woman;" others "child;" others "justice;" others "liberty;" others "freedom;" others "humanity." When we have learned these lessons with all that they mean and imply, it is too late to try to take liberty away from us. The American workingman is not typified by the man with the hoe, the man with the bent back and the receding forehead.

The American workingman has learned the meaning of the Declaration of Independence. The American workingman don't believe in the notion that the Declaration of Independence is a string of glittering generalities. The American workingman proposes to make the fundamental principles of the Declaration of Independence the rule of conduct for our every day lives.

The American workingman stands erect and looks the whole world in the face; not afraid, not ashamed; but declaring that he has a right of the equality of opportunity, and, particularly, of equality before the law.

Organizations of labor outlawed? Driven out of existence? Is it possible that our wisemen, men misnamed statesmen, who are merely politicians, men who are judges, and yet without knowledge of the true principles of justice; men who regard themselves, and, in many instances, are regarded as the best lawyers, because they have their heads turned back to the past more than any class who might have been born as far back as the time of Methuselah and who could not then know anything about modern conditions? Is it possible that such as these think they can outlaw labor organization?

But I ask again, can you imagine the results, were it possible to drive the organizations of labor out of existence?

Why, we could not discuss questions; we could not discuss a strike; we could not discuss a boycott; we could not discuss wages, hours of labor and conditions of employment, and how to secure better conditions, because the simple discussion of them must mean action on our part; to discuss them and adjourn; why they might as well not be discussed at all. We want some time to not only discuss a proposition, but at the end of the discussion put it to a vote and see whether it will be carried or defeated, or some modified proposition adopted.

The labor movement is not an academic organization. It is an organization of life, dealing with life and the issues that enter into our life every day of our existence. Then, supposing, because of the inability of the organizations to be of any effective service to their fellows, they dissolve. Is it imaginable that the American workingman is then simply going to bow down, yield, utter no protest, make no resistance? As a matter of fact, my friends, every worker would then seek his redress, or his improvement, or his revenge, if you please, in his own way; without discus-

sion; without the friction and enlightenment that comes from discussion; and instead of the wealth now possessed by our great Croesuses in this country, in perfect peace and tranquility and safety, the very possession of wealth would bring in its train curses and reactions, which can hardly be imagined now.

I said some time ago that if that were possible, to drive out of existence the open organizations of our trade union movement, the ordinary business organizations of the toilers—in my judgment the working people would then resort to the very best thing that they could under the circumstances—and that would be to organize secretly. They would be obliged to form such organizations in which they would be obligated to each other by oath to stand by each other under all circumstances as against aggression or injustice. There would be no way of knowing what forces obtained ascendancy. The newspapers have said that I threatened Congress that unless it passed the legislation which we asked in the name of labor that the workers would be driven into secret oath-bound organizations.

I am not accustomed to threaten anybody. Congress or anybody else; but I hold that in this, as well as in all things, I have a right to mention the thing that I have a right to do.

But apart from that, I did not threaten Congress, nor the people, with an oath-bound, secret organization. I told Congress what might happen under certain circumstances.

As a matter of fact, when the weather-bureau man here a few years ago told you that we were going to have snow or rain, or sleet and cold, you may have felt a little angry at the weather man; but he did not threaten you with that weather; he simply predicted it.

From all the reports received by him from the various parts of the country and from his own observations he was led to express that judgment. So as I receive reports from all over the country, and make observations of my own, I hold that I have a right to express my views of what is likely to occur, and without having them misinterpreted or misrepresented as threats.

I say that the spirit of organization among the working men and women of America has developed so far, the organizations of labor have done so much good, they have shortened the hours of burdensome toil, they have given the toiling masses of our country millions of hours of leisure, millions of golden opportunities; the organizations of labor have increased and improved the standard of American life in the home; they have brought sunshine where gloom prevailed before.

Take for instance the organization of the miners, not only of Illinois, but in the entire bituminous region and note the good it has done, from the long hour workday or no work at all, it has established the eight hour day for the miners. The organization of the miners went into the anthracite coal fields, and into that conglomerate mass of people, speaking as many tongues as those who built the Tower of Babylon; yet the organization of the miners transformed these masses of veritable slaves into the fairly intelligent, and they are now among the progressive and advanced workers of our country. They have for the past few years seen the light ahead,

the light of freedom, the light of hope for a better day. The organizations of labor have gone down into the abysses of misery and despair and helped to lift up the great submerged who had lost hope and courage, lifted them so that they might see, not only their rights, but their opportunities, and they now take their position side by side with the great advancing hosts of labor who are making for that brighter and better day.

The labor movement is not born only of material hunger, but it helps to satisfy the physical appetite and thus gives room for better things. Hungry for bread in the beginning; hungry for better food; hungry for shelter our workers become hungry for better homes; for light; for love; for books, for poetry, for music, for the arts; hungry for the affection of our fellow-men; hungry for humanity. May the day never come to blunt or stultify the spiritual hunger for better things instilled by the organizations of labor in the hearts and the minds of the working people of our country.

We find ourselves in a peculiar situation at present. There are perhaps not less than two millions of our fellow-workers unemployed. I have heard it stated in various ways at whose door the blame can be laid for the financial condition that brought about the present industrial situation. Some blame the princes of finance; some blame the Congress of the United States; others blame the administration of the United States; others blame the captains of industry, and so on ad libitum.

It is not my province at this time to discuss who is really to blame, but my only purpose in calling attention to it is to give expression to my opinion, an opinion, I am sure, which will be shared by every thinking man and woman—and that is that whoever else is to blame for the present industrial condition, surely the American workmen are not to blame.

All through up to last October the men and women who toil went on with their production, went on in producing the things that were necessary to our lives and contributed to our comfort; men and women worked on cheerfully and helpfully and hopefully, and returned from their day's work to their homes feeling the reward of a day's work well done—and over night what transpired? Here in this great country of ours, continent wide, with the earth just as rich and just as fertile, with all the wonderful resources, with all the intelligence and energy and industry of our people, they had retired for the night, and, lo, and behold, the transformation—not one jot of change in all the industrial conditions, in all the natural conditions; but through the manipulations, the ignorance, the malignity, or whatever it may be, of some princes of finance, our working people reported to their respective shops, factories, mills, and mines in the following morning, refreshed by their night's rest, and found that, to an enormous extent, the doors were closed in their faces, and they were thrown upon the streets.

My friends, I ask you can you see a condition of affairs similar to this in any other part of the world, where even property and life are so safe and safe-guarded as they are here, and with as little restraint

upon our people, except the restraint of American idealism and the organized labor movement of our country?

There is no power anywhere which proves itself so great a conservator of the public peace as the much abused organizations of labor.

Then, again, I ask you, my friends, what institution is there in all our country that makes an effort to educate the great number of emigrants that have come to our country? Who makes the effort to reach them? Except the great corporations; I do not mean them. They have reached for them on the other side; they brought them here. We are proud, and justly proud, of our free schools; but with the millions and millions of emigrants that have been brought to our shore within this past ten or twenty years, no effort is made to reach them. Why, my friends, it is the organizations of labor that send out their missionaries to these poor fellows and that try to bring them within the fold of organization and thus within reach of education.

There are some who say, "Some of your unions make mistakes; in this instance or that there has been quite a wrong done." Well, I shall not claim that the men of labor are all infallible, or that any one is; but I think, if you compare them man for man, organization with organization, the labor men and the labor organizations will favorably compare with any other men or other institutions in the entire country.

But the question of the mistakes. Well, what of them? We do not approve of them. We try by every means within our power to see that they are eliminated. But what of them? We say that if the great corporations send out their agents to any part of the world and bring people here under contract, bring them here with all their ignorance, with all their imperfections, with all their prejudices, and for no other purpose than profit, then, if they are good enough for that, then they are also good enough for us to try and organize them and make better men of them.

We do not want strikes. We want to avoid them, but there are some things that are worse than strikes; among them, a demoralized, or a degraded, or an enslaved manhood. These are worse than strikes. But we know that the best way to avoid strikes is to be prepared for them. We do not want to strike, but we will not surrender our right to strike.

The right to strike is a right inherent in man. We call it "strike" for convenience; but, indeed, what is it? It is the right to withhold your labor power; the right to say, "Well, I am not going to expend any of my vital force today in the shape of producing wealth. I produced enough yesterday, or the day before, or two days before, and I am going to loaf today, tomorrow, or next week, or until I can find some one who will give me a better consideration when I next exercise my mental and physical power in the shape of producing wealth."

No man who has been in a strike or a number of strikes wants to strike. I am sure that there is not any man within the range of my long experience, who has had some intimate association with the

labor movement, and who has had some strikes, but who has tried his level best in every way, with whatever influence he possessed, to prevent or avert strikes.

But, you know, everything is not done by the rule and spirit of altruism. You remember that when England had a dispute with Hindoostan, she simply sent her men in ships and bombarded them. When England has a dispute with a smaller nation she proceeds to conquer it. England had a dispute with Venezuela and she threatened to bombard her. Uncle Sam said, "Don't you do it," and she did not do it.

In that masterful message of the President of the United States of April 27th, he took occasion to say, upon this subject to which I am at this moment addressing myself, "The heartiest encouragement should be given to the wage-earners to form labor unions, and to enter into agreements with their employers, and their right to strike, so long as they act peaceably, must be preserved."

No man can ask for men on strike more than that. We do not want any immunity for our men or ourselves for any unlawful act, for any criminal act, but we propose to stand by our organizations; we propose to stand by labor and by our friends, and not only industrially, but politically. We will send some men to political oblivion, who imagine that they are going to kingdom come. And not only men who are candidates for Congress. Yes, we want to give our attention to them, but we will give our attention also to those who are candidates for the United States Senate, or governors, or those who aspire to legislative honors, and judicial positions; and to the man who may be a candidate for the highest honors within the gift of the people. We demand justice; we demand that he be with the great common people, or we are against him.

My friends, I want to address myself for a few moments to one of the fundamental subjects upon and about which much of this misconception of our people regarding labor organizations is based. It is this: That we have, all of us, fallen into the common error of using the word "labor." All of us have fallen into that error; and when I say all of us, I do not want to exclude myself. We have, by our error in its use, drifted away from the original genuine meaning of the word "labor." I mean in so far as men and women who work are concerned. I do not mean the simple swinging of the sledge, the running of a lathe, or the picking of coal, or the setting of type, or the making of bread—that being labor. No!

520 I mean in so far as the word "labor" is applied to men and women. Now, as a matter of fact, capital is the product of labor. The product, rather—you see I was falling into the error just now myself—the product of a laborer, the product of a man or woman. Capital is the product of human effort. Capital is largely dead—an inanimate thing. Capital may be transported from Chicago to California, or Kalamazoo, or China, and yet it may not affect the liberty, the personality, the living man who was its owner or is its owner. We hear it in Congress; we find it in court decisions. Yes, we find it in the editorial utterances of our intelligent newspapers; that there must be equality of treatment of capital and labor

or labor and capital. Why, what is labor? Labor is human effort. Labor is the result of the brain and the brawn. You can not differentiate the labor from the laborer. The laborer and his labor are part of himself. It is himself. It is the flesh and blood; the human, living, breathing man or woman; and you can not transport labor without transporting the laborer.

You may deal with capital. Labor can not be treated in the same category as capital. That is not equality of treatment. Yes, if the comparison were made of the laborers on the one hand and the capitalists on the other, then it means human blood and human blood; it means human rights with human rights; but to speak of labor and capital as being on an equality is the misunderstanding of the terminology of this great question in which much is involved.

My friends, we ask from Congress the consideration of our position. Not in the form of asking immunity from the application of laws equally to us as men and women as to all other citizens in society; but we do ask that the labor organizations, the organizations of the men and women who toil, shall not be regarded as trusts and in restraint of trade.

Why, the idea of designating the organizations of the men and women who work every day as trusts. Trusts are formed for the purpose of squeezing out the largest number possible and conferring benefits upon the smallest number. Why, you can not break into a trust with an axe, using a common expression. The labor organizations, the organizations of the men and women who work, their very success and permanency, depend upon their extensions to the largest possible number.

We send out our 1,200 to 1,500 missionaries, called organizers, voluntary organizers, in the main, who go out preaching the gospel of duty, the duty of man to help to bear his brother's burdens, and to expect in return a mutuality of interests in the performance of duty.

The organizations of labor throw wide open their doors and invite the world of workers to enter, to participate in the responsibilities and to reap the harvest of benefits.

It is almost incomprehensible to a thinking man, that courts and Congress and the newspapers will regard the labor organizations as trusts, and to be treated on a par with these corporations organized for no other purpose than profit. Therefore, some people will say, "Well, we won't change the law." I ask you men, then, what are you going to change? Change industry? Turn the wheels of industry back? Go back to the forms of production and distribution, and the transmission of intelligence as they were a hundred or more years ago? We could not live that way now. Just think of it. Getting along without your—well, poor railroad service as you have; but try to get along without it at all; try to get along without your telegraph, your telephone; try to get along without your newspaper; try to get along without your machinery in the factories, without steam, without electricity. Think of it, could you go back? Why, it is simply unthinkable. You can not turn the wheels of industry back, yet the law makes our procedure illegal, and what are you

going to do? Something has got to give way. You can not turn back industry. We hold that the law bearing upon that subject must be either amended or ended. And we have asked the passage of the measure, which I have been particularly discussing; the bill which has been introduced into Congress by the Hon. William Wilson, amending the Sherman anti-trust law. He has introduced our bill into Congress. Of course, they say down in Washington that it is not going to pass, and they may be right; but if they are right, then it is you, and you working men and sympathizers here and elsewhere, who are somewhat to blame. They will respond in Washington so quick that it will make your head swim, if you ask that legislation, and show that you are thoroughly in earnest and want it—and want it not some other time, but now.

I said a while ago that we were primarily interested as union men in our own members. That is true. We would not be human were we otherwise. But the men of labor would not give their time and their lives to the agitation of, and to the education of this great labor movement, if its influences were confined to its members alone.

The labor organizations can not do an act of any sort but it will have its influence; not only upon the members of the trade or calling directly involved, but in the entire ramifications of society. If the labor organization shall succeed in preventing a reduction in wages, don't you see that that very fact will check a reduction in wages of the non-union men as well? Don't you see, that when the organizations of labor secure an increase in wages, why they practically pull up the condition of the non-union workers? Don't you know that when the hours of labor of the union members are shortened, that it shortens the hours of the non-union men? This great agitation for more time, for more leisure, for more opportunity, for the establishment of a universal eight hour workday—it has had its influence not only upon union and non-union workmen, but it has its influence in every ramification of society.

And so, my friends, let me say, that though our labor movement today seems to be placed in the position that we are fighting for the liberties of the union men, that is but a superficial view of it. We are fighting for the liberties of all our people, not only today, but for all time.

During the middle ages the nobles were wise enough to nurse the power which was exercised and inherent in the free cities. I take it, my friends, that it would be the part of wisdom that if those who loved liberty most and who stood for the principles upon which the republic of our country is based, would realize that in the labor movement of our time is vested the power and the spirit to

defend justice and to perpetuate free institutions. If they do not possess that understanding, if they do not realize that fact, then to the workmen alone, and upon their shoulders alone, falls the duty and responsibility of standing for the principles for which the labor movement stands today, and which involves the very essentials of free institutions.

As government by injunction, as government of a personal character succeeds, in that same degree does government by law, government by justice, resist and force back. The labor movement stands

for a government by law, rather than personal government, particularly that of judges acting in the courts of equity as they do.

I am asked sometimes how far this movement is going in this campaign. I can not say. I do not know. Every hour seems to bring a new development, a new move; but let me say that this labor movement of ours is in this campaign not only because of the campaign, but it is going to be in the van for the fight for right and for justice. Where it may lead no one knows. But you men and women of Chicago occupy very much of the position of the storm center of this labor movement of America. I am so proud, men and women of labor, of the magnificent position that the trade union movement of Chicago has taken.

Many of you know me, and I think you will give me the credit of not being a flatterer; surely not an idle flatterer. I have found fault with you often; I have had occasion to criticise you at times, but I think you will do me the credit now to admit that my criticism, whether justified or not, was prompted by the very best purpose—to serve the men and women of labor of Chicago.

I say this not to win your favor personally for myself, but to explain to you that it is no flattery when I say that I am so proud of the magnificent position of the organized labor movement in Chicago.

Now, upon you devolves much of the success of our cause. You can not postpone this contest until some other time. I don't know what your politics are, and I care less; I only hope and pray that the time has come that the men of labor, and that the men in all conditions of life, will grow a little mentally beyond party domination, no matter what that party may be.

We have been so accustomed to brand or to label ourselves as belonging to one party or another that one says that he has been a democrat because his grandfather voted for Jackson; the other is a republican because his father "fit" in the war for the abolition of slavery and the maintenance of the union. If the men of our country will only assert their personal independence, depend upon it that the progressive legislation essential to our progress and our welfare will be enacted with great promptness and effectiveness. Whatever difficulties we have had to contend with in the past, most of them can be attributed to party domination over men—to alienate them—yes, to emancipate them from party domination is one of the very best things to which we can apply ourselves.

We do not want to tear down an institution worth preserving, which can be in any way helpful to our people. It is the purpose of our labor movement to help to maintain all good things, not to destroy, but to construct, to build up, not only material wealth, but character and manhood and womanhood. Men of labor and friends, I sincerely hope, with the progressive men and women of our time, that the men of labor, as thinking men, at this time will do their duty. Make your power felt; stand by your unions of labor, no matter what the cost. It may be that some men may be compelled to suffer. Well, others have suffered before that we might be free, and no man can shirk the responsibility or the duty of stand-

ing by the institutions of labor today, for they are the mainstay of the liberty of the future. The rich—they can be free wherever they go. They need not remain in the United States to be free; they can go to Russia, to Germany, to France, to England, even to Ireland. But in all countries there have always been the hewers of wood and the drawers of water who have had to stay and to contend and fight for the maintenance of freedom.

Why our rich! What do you think many of them would give for a good, nice title in the empire of America? Men who give millions and a beautiful daughter for an old, worn-out duke. Is it difficult to imagine that they would be willing to give something for a good title in their own country

My friends, I said that the wealth possessors are free wherever they go, and I will not begrudge them their freedom. All we insist upon is being free ourselves. There is no power or factor so potent to maintain that freedom that we now possess, and to obtain absolute equality before the law and equality of opportunity as the labor organizations of our time, I appeal to you not only as organized men and women of toil; I appeal to you, my friends, who are not known in the category of wage-earners, to enlist your co-operative support in order that this movement of ours, American to the core, American in principle, American in direction, in thought and spirit, for we want to have this country the greatest country on God's green earth.

No country has become great or powerful, or remained such for any considerable length of time, based upon low wages or long hours of its working people. No country can long remain great if based upon the exploitation of the young and the innocent children, who ought to be out of the factory and workshop, who should be in the home, at the fireside, in the schoolroom, in the playground, to imbibe God's bright sunshine, and to grow into the perfect manhood and womanhood of the future. Labor organizations have accomplished much of this, and will accomplish much more. It is our purpose to see to it that this country shall be not only a haven of civil and religious liberty, based upon the spirit of 1776, of 1861, the spirit that went to make Cuba free, as well as the movement that cut the shackles from 4,000,000 black slaves: the spirit of Patrick Henry; the spirit of Lincoln. The spirit is not dead, and we propose to help in making this country of ours the home of industrial freedom, the three links of civil liberty, religious equality and opportunity, and industrial freedom, and under God's guidance, moving onward and forward, establishing the dream of the poet—the brotherhood of man.

522 This address was delivered in Chicago, on May 1st, witness being asked to attend. Whether it is in whole, or is absolutely correct, is not in a positive position to state, but it is substantially what he said. Has not even, up to this time, read it in total. Is an address upon the fundamentals of a republican form of government, the freedom of the citizen, and calling attention that other republics preceded ours, and many of them have fallen, particularly by the efforts to prevent or deny the right of free assembly, of asso-

ciation, of free speech through publication, or free press, as it has come down to be known. Witness took occasion during that address to point out some of the occurrences in our republic, and endeavored to impress upon his hearers; it was their duty to take an active part in political and civil efforts, so that the republic might not only endure, but be unimpaired. The speech was to be in continuance of the Federation campaign to secure relief, and in preparation for the campaign they had proposed and declared they would make in the presidential campaign of 1908, and delivered about three weeks before the republican national convention in Chicago. The speech was extemporaneous, and not taken down by witness's direction, who did not know any part of it was published in the Federationist until after it was published, if that was a part, and delivering it, had no thought or intent, or was there any expression therein, for the purpose of aiding, abetting or assisting a boycott against the Buck's Stove and Range Company.

Witness and others were actively at work in their campaign for the purpose of affecting the action of both parties in their convention, and was in Chicago at the time of the holding of the 523 Republican Convention, and in behalf of the organization he represented, proposed certain planks to the convention which were formulated by himself and associates of the executive council of the A. F. of L., and committee consisting of James Duncan, Daniel J. Keefe, vice-president of the American Federation of Labor and himself, consulted for the purpose of presenting these planks to the Republican Convention. Witness was made its spokesman and addressed the committee on the subject. The planks presented, offered by Mr. Parker in evidence, were as follows:

"Planks Proposed by Labor to the Republican Convention.

"The Republican party is in accord with the great emancipator, Abraham Lincoln, when he declared that 'labor is prior to and independent of capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital and deserves much more consideration.' Through his wise and humane policy the shackles were stricken from the limbs of four million chattel slaves. The Republican party has been the staunch defender of property and property right, yet holds and declares that personal rights and human liberty are and must of necessity be entitled to the first and highest consideration. Recognizing the new conditions arising from our marvelous industrial development, our people and our nation realize the fact that the wheels of industry and commerce of our time require that new law and new concepts of law must be enacted to conform to modern industry and commerce and advance freedom in line therewith.

"We therefore pledge the Republican party to the enactment of a law by Congress, guaranteeing to the wage-earners, agriculturalists, and horticulturists of our country, the right of organized effort to the end that such associations or their members shall not be regarded as illegal combinations in restraint of trade.

"We pledge ourselves to the enactment of a law to prohibit the

issuance of injunctions in cases arising out of labor disputes, when such injunctions would not apply when no labor disputes existed;

and, that in no case shall an injunction be issued when there
524 exists a remedy by the ordinary process of law, and which
act shall provide that in the procedure for the punishment
of contempt of court, the party cited for contempt shall when such
contempt was not committed in the presence of the court be entitled
to a trial by jury.

"We pledge the Republican party to the enactment of an amendment extending the existing eight hour law to all government employees, and to all workers, whether employed by contractors or by subcontractors doing work for or on behalf of the federal government.

"We pledge the Republican party to the enactment of a law by Congress, as far as the federal jurisdiction extends, for a general employers' liability act for injury to body or loss of life of employees.

"We pledge the Republican party to the enactment of a law to the extent of federal jurisdiction granting women's suffrage, and to submit a constitutional amendment for ratification to the states for the absolute suffrage of women co-equal with men.

"We pledge the Republican party to the enactment of a law creating a department of labor, separate from any existing department, with a secretary at its head having a seat in the President's cabinet.

"We pledge the Republican party to the enactment of a law for the creation of a federal bureau of mines and mining, preferably under the purposed department of labor, and the appropriation of sufficient funds to thoroughly investigate the cause of mine disasters, so that laws and regulations may be recommended and enacted which will prevent the terrible maiming and loss of life in the mines.

"We pledge the Republican party to the enactment of a law for the establishment of United States government postal savings banks."

To the foregoing offer of evidence Mr. Darlington objected on the ground that they were without the slightest bearing upon any of the issues of this case, the question being whether witness disobeyed an injunction of the court.

Mr. Parker offered in evidence, the following:

"Injunction Plank Adopted by Republican Convention.

"The Republican party will uphold at all times the authority and integrity of the courts, state and federal, and will ever insist that their powers to enforce their process and to protect life, liberty, and property shall be preserved inviolate. We be-
525 lieve, however, that the rules of procedure in the federal
courts with respect to the issuance of the writ of injunction
should be more accurately defined by statute, and that no injunction,
or temporary restraining order should be issued without notice,
except where irreparable injury would result from delay, in which
case a speedy hearing thereafter should be granted."

(To the foregoing Mr. Darlington made the same objection.)

Later on witness appeared before the Democratic National Convention, at Denver. The executive council held a meeting in Denver the early part of July, 1908, and adopted the planks which were presented to the Republican National Convention at Chicago, to be presented to the Democratic National Convention, the only words changed being the name of the party to whom it was addressed. These planks, as proposed, appear on page 601 of the *Federationist* of August, 1908.

Mr. Parker offered the same in evidence as follows:

"Planks Proposed by Labor to the Democratic Convention."

"The Democratic party now, as heretofore, declares for and reaffirms the great Jeffersonian principle set forth in the Declaration of Independence, that all men are endowed with certain inalienable rights, among them being life, liberty, and the pursuit of happiness, and that government derived its just powers from the consent of the governed. These eternal principles enunciated with the formation of our republic form the keystone to civil liberty and freedom of all our people, yet at no time since our independent national existence have these principles and safeguards been so imperiled as at the present by the discrimination which denies equality before the law alike to all our people.

526 "The Democratic party has been the staunch defender of our *party* and property rights, yet holds and declares that personal liberty and human rights are and must of necessity be entitled to the first and highest consideration. Recognizing the new conditions arising from our marvelous industrial development, our people and our nation realize the fact that the wheels of industry and commerce of our time require that new law and new concepts of law must be enacted to conform to modern industry and commerce and advance freedom in line therewith.

"We, therefore, pledge the Democratic party to the enactment of a law by Congress guaranteeing to the wage earners, agriculturists, and horticulturists of our country, the right of organized effort to the end that such associations or their members shall not be regarded as illegal combinations in restraint of trade.

"We pledge ourselves to the enactment of a law to prohibit the issuance of injunctions in cases arising out of labor disputes, when such injunctions would not apply when no labor disputes existed; and that in no case shall an injunction be issued when there exists a remedy by the ordinary process of law, and which act shall provide that in the procedure for the punishment of contempt of court, the party cited for contempt shall, when such contempt was not committed in the presence of the court, be entitled to a trial by jury.

"We pledge the Democratic party to the enactment of an amendment extending the existing eight hour law to all government employees, and to all workers, whether employed by contractors or subcontractors, doing work for or on behalf of the federal government.

"We pledge the Democratic party to the enactment of a law by Congress, as far as the federal jurisdiction extends, for a general employers' liability act for injury to body and loss of life of employees.

"We pledge the Democratic party to the enactment of a law, to the extent of federal jurisdiction, granting women's suffrage, and to submit a constitutional amendment for ratification to the states for the absolute suffrage of women, co-equal with men.

"We pledge the Democratic party to the enactment of a law creating a Department of Labor, separate from any existing department, with a secretary at its head having a seat in the President's cabinet.

"We pledge the Democratic party to the enactment of a law for the creation of a federal bureau of mines and mining, preferably under the proposed department of labor, and the appropriation of sufficient funds to thoroughly investigate the cause of mine
527 disasters, so that laws and regulations may be recommended and enacted which will prevent the terrible maiming and loss of life in the mines.

"We pledge the Democratic party to the enactment of a law for the establishment of United States government postal savings banks."

To the foregoing Mr. Darlington objected for the reasons above stated.

Mr. Parker next offered in evidence the following, being from page 602 of the August, 1908, Federationist:

"Labor Planks Adopted by Democratic Convention."

"The courts of justice are the bulwark of our liberties, and we yield to none in our purpose to maintain their dignity. Our party has given to the bench a long line of distinguished judges who have added to the respect and confidence in which this department must be jealously maintained. We resent the attempt of the Republican party to raise a false issue respecting the judiciary. It is an unjust reflection upon a great body of our citizens to assume that they lack respect for the courts.

"It is the function of the courts to interpret the laws which the people create, and if the laws appear to work economic, social or political injustice, it is our duty to change them. The only basis upon which the integrity of our courts can stand is that of unswerving justice and protection of life, personal liberty and property. If judicial processes may be abused, we should guard them against abuse.

"Experience has proven the necessity of a modification of the present law relating to injunctions, and we reiterate the pledge of our national platform of 1896 and 1904 in favor of the measure which passed the United States Senate in 1896, but which a Republican Congress has ever since refused to enact, relating to contempts in federal courts and providing for trial by jury in case of indirect contempt.

"Questions of judicial practice have arisen, especially in connection with industrial disputes. We deem that the parties to all judicial proceedings should be treated with rigid impartiality, and that injunctions should not be issued in any cases in which injunctions would not issue if no industrial disputes were involved.

"The expanding organization of industry makes it essential that there should be no abridgment of the right of wage-earners and producers to organize for the protection of wages and the improvement of above conditions to the end that such labor organizations and their members should not be regarded as illegal combinations in restraint of trade.

"We favor the eight hour day on all government work.

"We pledge the Democratic party to the enactment of a law by Congress, as far as the federal jurisdiction extends, for general employers' liability act covering injury to body or loss of life of employees.

"We pledge the Democratic party to the enactment of a law creating a Department of Labor, represented separately in the President's cabinet, which department shall include the subject of mines and mining."

(To the foregoing offer Mr. Darlington interposed the same objection.)

Witness testified that the foregoing showed the result of the sentiment witness and associates helped to create during a period of several years, particularly in 1906, in the Littlefield campaign, and continued from then on, perhaps a little more acutely, during the year 1908.

Witness testified that the following extract from the July, 1908, Federationist, page 531, was not published for the purpose of aiding, assisting or abetting an alleged boycott against the Buck's Stove and Range Company, but was published as a statement of fact and piece of news which everyone was entitled to know, and being the editor of a magazine, witness had faith and confidence that he had the right to publish a piece of news. The extract referred to is as follows:

"The Supreme Court of the District of Columbia has made permanent the injunction issued by Justice Gould enjoining the American Federation of Labor, its officers, its affiliated unions and their members and friends from declaring that the Van Cleave Buck's Stove and Range Company of St. Louis is on the unfair list of the American Federation of Labor, or the publication of that statement in the American Federationist. An appeal will be taken to the Court of

Appeals of the District of Columbia, and, if necessary, to the United States Supreme Court. The injunction does not compel anyone to buy the Van Cleave Buck's stoves and ranges, nor has any decree been issued compelling anyone to buy Loewe's hats."

Witness testified that W. J. Gilthroe's name was attached to article on page 529 of the report of this case, quoted from the September 1908, Federationist, beginning "I notice that President Gom-

pers, Secretary Morrison," etc., and that the article came in response to a circular letter which he sent out, asking a number of men to write upon phases of the labor movement, or question, or of other general public interest, for publication in the September, Labor Day, issue of the Federationist.

These letters were seldom received by witness, as he seldom opened the mail, particularly this class of matter. When letters of this sort were sent out, there were self-addressed envelopes enclosed, and all letters in such envelopes are opened by someone employed by the department in which the whole work of the Federationist is performed. Those letters being symposiums upon labor, were received and given attention by one of his assistants. Did not see that letter until it was in print in the Federationist, or this particular quotation until his attention was called to it during this hearing.

Mr. Parker offered in evidence editorial, on page 724 of the September, 1908, Federationist, as follows:

530

Editorial.

By Samuel Gompers.

Some Reflections for Labor Day, 1908.

On this Labor Day, 1908, we extend fraternal and sincere greetings to the toilers of our country. Considering the many important happenings in the industrial world since last Labor Day, we find much upon which to ponder seriously and also much to encourage all to still greater efforts in behalf of the great principles upon which the labor movement is based. Important events have crowded so fast that we may truly say that never was there a time in the history of the labor movement in which there was greater incentive to earnest, united, and loyal action on behalf of the toilers. We believe that never was there among the workers so great a desire, so high an aspiration to achieve the highest ideals which our movement contemplates. It may be well at this time to briefly pass in review the most notable events since last Labor Day.

Last October, when the toilers of our country were keyed up to the keenest energy, ready and willing, as usual, to perform their great service to society, a monstrous unnecessary, and purely artificial panic was thrust upon our people through the manipulations of the princes of finance. Since then nearly 2,000,000 of our wealth producers have been thrown upon the streets in idleness.

In some manner or other the workers have managed to scurry through these 10 months of idleness. The effectiveness of organization in resisting wage reductions has been triumphantly demonstrated; but how describe the bitter sufferings and deprivation, caused by the closing down of mill and mine and factory, thus throwing hundreds of thousands into absolute idleness for a long period? How will these men fare should these conditions continue during the coming winter? The stoutest heart must grow sad at the contemplation of the possible distress which will be entailed, not only

upon the workers, but upon helpless wives and little ones dependent upon their daily toil.

We with all other sincere students of affairs, not only deplore the existing industrial situation, but earnestly hope that the tide will soon turn, and that the workers may speedily find the opportunity of employment.

An outrageous anomaly is presented in this great country of ours, so rich and fertile, when men vainly seek the opportunity to render service to society, to create wealth so necessary for their own and the common good. It is a travesty upon our civilization, an interrogation mark to all the claims of progress.

Of one thing all may rest assured, that the workers of America will not rest content under a condition so woefully at variance with the welfare of our people. There will not and there must not be created in the United States a permanent army of unemployed workers.

531 The men of labor of the United States have learned the lesson of self-reliance, independence, and associated effort. They are not men with bent backs and receding foreheads. They are not typified by the "man with the hoe." The toilers of our country stand erect. They will accept neither special favors nor charity. They ask but their rights, not only their political, but also their industrial rights. If we understand their temper aright, and we think we do, they will manfully struggle until success is achieved.

During the year we have seen the Supreme Court interpreting the Sherman anti-trust law to make it apply to the voluntary associations of wage-earners—a law passed at the demand of the people to protect them from aggression and outrage at the hands of trusts and corporations.

Under this interpretation of the law the labor unions are declared trusts, conspiracies, and unlawful combinations in restraint of trade. This Supreme Court decision makes not only every officer, but every member of every organization of labor liable to prosecution by federal authority, and to a fine of \$5,000 or imprisonment for one year, or both in the discretion of the court; also liable for treble damages in cases where they exercise their right of voluntary associated effort **to protect their personal rights and liberties.**

The far-reaching character of this decision must constantly be kept in mind. The toilers must spare no effort to secure remedial legislation for the restoration of their rights, which have been so seriously jeopardized by this decision.

We have also witnessed in the past year most serious judicial invasion and usurpation of individual liberty and human freedom by the abuse of the writ of injunction. An attempt has been made by the abuse of the writ of injunction to deny and prohibit the freedom of speech and the freedom of the press, and men have been cited to show cause why they shall not be punished purely for the exercise of the right of free press and free speech, rights not only natural and inherent in themselves, but guaranteed by the constitution of our country, and which our forefathers fought to establish, and which a free people never dreamed would ever be placed in jeopardy.

And yet, despite these matters for most serious consideration and action there is much cause for gratification, for never before in the history of the people of our country has there been such a spirit of fraternity and solidarity among the toilers, such a determination to stand by each other, and by the organizations of labor, which have done so much to bring sunshine and hope into the lives of the toilers.

In all parts of our country the workers, the wealth producers, and liberty-loving people are united in heart and mind, determined that the wrongs which the toilers have too long borne shall be speedily righted, and the rights to which they are justly entitled shall be established and safeguarded.

The Norfolk convention of the American Federation of Labor last November sounded the keynote for united action upon the part of the toilers in every field of activity to secure justice. The great

532 Protest Conference held at Washington last March, in which the responsible representatives of the American trade unions participated and which was in effect a special convention of the American Federation of Labor re-emphasized this determination and directed the officers of our general labor movement, and recommended to the great rank and file of the workers of our country, to make every effort to secure legislation at the hands of Congress, or upon failure of Congress to take such further action, lead wherever it might, which would safeguard and advance the rights and interests of labor and secure justice to all.

The great mass meetings held all over the country, April 19th - 20th at the call of the Protest Conference were emphatic in declaring for action to redress wrongs and secure Labor's rights.

The pledge was individually and collectively made for the exercise of their fullest political and industrial activities by the workers now and in the future to the end that they should elect such candidates for President of the United States, representatives or senators in Congress, and such other executive, legislative, or judicial candidates for office as would safeguard and protect the interests of the wage-workers as well as the people of our country. These mass meetings further resolved that the toilers and their friends fully aroused would not be lulled into fancied or false security by promises, however plausible, or protestations, however masked by friendship, but called upon all workers, friends, and sympathizers and an enlightened public citizenship without regard to party affiliation to

"Stand by our friends and elect them;

Oppose the indifferent and hostile to our cause, and defeat them."

In these resolutions the workers declared that in this action for their common protection, they were moved by a high sense of duty and a profoundly conscientious purpose to serve not only the workers of our time, but all the people of our great country for their industrial, political, social, and moral uplift.

So general and intense an expression of purpose by America's workers was, in its very nature, a command. The representatives of the labor movement earnestly urged and petitioned Congress to action. Its cold-blooded, antagonistic answer is now history.

Congress adjourned, and, under the direction and by the authority of the rank and file of the men of labor, organized and unorganized, the Executive Council of the American Federation of Labor proceeded to the representatives of the great political parties, in national convention assembled, and presented Labor's grievances and Labor's demands, asking for the righting of the one and granting of the other.

At the convention of the Republican party at Chicago it is well known what scant courtesy was accorded, and that which was incorporated in the platform was worse than if the entire subject had been ignored. It was an affirmation for a law that would give statutory authority for the very worst abuses of the injunction writ—an authority which does not now exist.

On the other hand, the representatives of Labor were welcomed by the representatives of the Democratic party. An entire evening was given to Messrs. Duncan, Mitchell, and Gompers of the American Federation of Labor Executive Council, and Mr. Fuller, representing the railroad brotherhoods, to present and argue Labor's contentions. All members of the Executive Council of the American Federation of Labor present at Denver being in attendance at the hearing. Finally, the Democratic party constructed its platform to conform to Labor's demands.

It is true that other minor political parties have declared more or less plausibly in favor of Labor's contentions. With that subject we have dealt elsewhere in this issue of the American Federationist. We simply repeat here that the American workers are not "playing" politics. They are engaged in an earnest, serious, determined contest today to secure the rights of the working people and all our people; not in some future, dim, distant day, but now. America's workers can not afford to postpone what is their absolute interest and duty now.

It is useless for any one to pretend to say that either the Executive Council or the president of the American Federation of Labor has bartered Labor's vote, pledged it, or attempted to dictate what the toilers shall do in the exercise of their franchise.

Neither the Executive Council nor the president of the American Federation of Labor approached the political parties or this campaign as Democrats or as Republicans. Neither individually nor collectively are they annexed to any political party, nor is the labor movement annexed. The men and the movement propose to be as independent after this coming election as they are today or have ever been. They do, however, realize that the Democratic party and its candidates have made Labor's contention their own. This party stands pledged, if placed in power, to secure Labor's rights. We would be recreant to our trust and the duty we owe to our fellow-workers and our fellow-citizens did we not support the Democratic party and candidate to triumph in this campaign.

Of course, each voter, whether wage-earner or a citizen in any other walk of life, must be the final arbiter of his own franchise; but we opine that the men of labor, that the great mass of thinking, intelligent, patriotic Americans will not fail to take advantage of

the opportunity now presented to perform their whole duty to themselves, to their country, and to the generations yet to come.

As to the deep-seated and intense feeling manifested by the workers of our country, let the voice already expressed by organized labor be the answer. Look to the columns of this issue of the American Federationist wherein so many men and organizations, in contributed articles, official resolutions, and letters, have fully expressed their determination to abide by the advice of the American Federation of Labor to protect the rights and interests of labor, which, in the last analysis, are rights of all.

We readily realize that for well-defined antagonistic purposes the motives of our men and our movement will be called into question, their honor and honesty aspersed, their faithful adherence to the best interests of the workers questioned, and all sorts of ulterior purposes ascribed. But no one will really be deceived. All will understand.

So far as we are personally concerned in this campaign there is
534 neither personal advantage nor preferment of any sort which
can come to us. Some have earnestly and others sneeringly
intimated that some high political office awaits us as the result of Democratic success in the coming campaign. We can but answer that there is no office within the gift of the people, or the government, for which we are a candidate or which we would accept. It is our unalterable determination to decline, as we have always declined to accept, either an elective or an appointive position under the government of our country. Not that these positions can be lightly laid aside or declined, but it is our firm conviction that we can best serve the interests of our fellow-workers and the people generally in the labor movement, whether as an officer or one in the ranks.

We urge upon the toilers of the country from now on to stand by their unions, if possible, more earnestly than ever before. We shall require our organizations more, even in the future than we have in the past. Let us go among the yet unorganized and bring them within the beneficent fold of our unions. Let us extend the hand of fellowship to the non-union men and bring them to understand that it is their highest duty and moral obligation not only to reap the advantages which associated effort brings, but to bear in part the responsibilities and obligations which it imposes.

Let all on Labor Day preach the gospel of the rights and the just demands which organized labor presents to society, bearing in mind each other from one end to the other of our country, bearing in mind that we have one common goal to achieve. We are associated not to tear down, but to build up. We are associated to help our fellows, the men and women of toil and the children whom it is our aim to rear to a high conception of patriotism, so that they may in their turn perform their duty and hand along the republic of Washington, Jefferson, and Lincoln unsullied and unimpaired to the generations yet to come.

All hail Labor Day, 1908! The future is ours.

535 Witness said in the editorial just offered, including the paragraph which the Committee had put in evidence, was intended to aid, assist, or abet an alleged boycott against the Buck's Stove and Range Company, and he had no such thought in mind.

Witness testified that he gave directions that petition in contempt proceedings, to be found in the September, 1910, Federationist, should be reprinted absolutely as it appeared in the petition, without change whatsoever. If there was a change in dress of type, it was not done with witness's knowledge, or direction, and the purpose of his printing was not to aid, assist or abet an alleged boycott against the Buck's Stove and Range Company. It was published as one of the incidents, an important incident, in the progress of the case.

Mr. Parker offered in evidence from the November, 1908, Federationist, the entire address delivered by the witness as Indianapolis, Indiana, September 29th, appearing at page 983 of the American Federationist of November; extract from which was offered, on behalf of the committee on page 569 of the minutes.

536 Labor's Duty in Politics.

Address by Samuel Gompers at Indianapolis, Ind., September 29.

INDIANAPOLIS, IND.

"Joe Cannon is the Mephistopheles of American politics and Jim Watson is the Faust that is attempting to pollute and defile the Marguerite of American citizenship," was the way Samuel Gompers, president of the A. F. of L. referred to the two politicians last night, in his speech at Tomlinson Hall. He followed this with as bitter denunciation of Cannon and Watson and their public records as has been heard here in many a day.

"Joe Cannon says one thing, however, that I admire," Mr. Gompers continued, "and that is that he does not try to be consistent. He changes front easily without making any excuses, but every time he changes it is from bad to worse. Behind that sinister smile lies incarnate antagonism to human progress.

"But I am not here to fight Joe Cannon. I do not like long range fighting. I did that in his own home town on Labor Day. I am here for game that is nearer home." By this he meant Congressman Watson, Republican candidate for governor.

Attacks Watson's Record.

Mr. Gompers was making a speech on "Labor's Side in Politics," under the auspices of the Central Labor Union. The hall was filled with laboring men and women, who applauded frequently.

"Congressman Watson made a speech at Gary some months ago," said Gompers, "in which he spoke of his being nominated for governor. He said he was being denounced by a man named Samuel Gompers, who was pointing to his record in Congress on labor matters. Watson said Gompers was charging that he voted against the interests of labor on numerous occasions, but that Gompers did not point out any specific instances. 'Produce the proof,' said Watson. Well, I'll produce the proof.

"Watson voted to annul the eight-hour law on the Panama canal. Organized labor opposed the bill.

"We wrote letters to the members of Congress asking them to state their positions on various measures in which Labor was interested. Watson never answered. We wrote him again and still he made no answer.

Ship Subsidy Action.

"Watson voted in favor of a bill to abolish compulsory piloting of vessels, even in dangerous harbors, thus endangering the lives of seamen. Organized labor opposed that bill.

"Watson voted in favor of the ship subsidy bill, which provided that the subsidy should only be enjoyed by any shipowner who required his seamen to sign an agreement to hold themselves subject to the call of the government for naval service. Organized labor opposed that bill.

"A bill was pending before Congress to limit the hours of workmen on railroads. Watson not only opposed that bill, but, as whip of the House, he was sent out by Speaker Cannon to order every Republican Congressman to be present to vote against it.

"Am I offering the proof? Does Mr. Watson wish any more proof?

"In his Gary speech Watson said Samuel Gompers had never taken out his naturalization papers; that he was not a citizen of the United States, and had never voted, but that he was advising American voters how they should vote."

Naturalization Papers.

Mr. Gompers drew from his pocket a document and read it. The paper was his naturalization paper, dated October 4, 1872, issued by the superior court of New York, admitting Mr. Gompers to full citizenship in the United States. Mr. Gompers was cheered when he read this paper.

"The fact that I was born in another country would prevent me from holding the office of President or of Vice-President," he said. "but Jim Watson has no more show of being elected governor of Indiana than I have of holding one of those offices." Again he was cheered.

Most of Mr. Gompers' speech was devoted to a discussion of the injunction question, and he is at this time on trial before a federal court in Washington, together with John Mitchell and Frank Morrison, charged with contempt of court. Mr. Gompers said all he did was to print in the American Federationist articles regarding the Buck's stove case, in which an injunction was issued against the A. F. of L.

"I am enjoined by that court order from even mentioning the case in any manner," he said. "I am in contempt of court right now for speaking of the case, but I propose to speak of it just the same. I may go to jail, but I shall discuss it. If I don't I'll explode.

Taft's Injunction Decision.

"In granting the injunction against us in the Buck's stove case, Judge Gould quoted from the famous injunction decision of Judge Taft. He said Congress and the legislatures had from time to time granted franchises and special privileges to one class and took away the rights and liberty of the masses. And courts, he said, were interpreting the laws in such a manner as Congress and the legislatures would not dare to pass them.

"Who ever believed that the courts would hold that labor unions are trusts coming under the provisions of the Sherman anti-trust law?" he inquired. "The members of organized labor may not know it or believe it, but according to the court decisions they are all members of a trust. They are trust magnates because they are connected with a labor organization. But the failure to prosecute any of you under that decision is due to one of two causes, either the administration does not believe in doing it, or the administration does not believe it practicable to do it at this time."

As to Contempt Proceedings.

Speaking further on the subject of the contempt proceedings pending against him in Washington, Gompers declared:

"As long as I retain my health and my sanity I will speak on any subject on God's green earth. And as editor of the American Federationist I will discuss every subject that appeals to me as just and right. I have not surrendered and am not likely to surrender the right of freedom of speech and freedom of the press.

"To me it is an insult to the workers when any man seeks to intimidate or induce the action of other men, either by threat or starvation, or promise of a full stomach. It is inhuman. It is an appeal to the beast and not to intelligent individuals. The full dinner pail was not brought to labor on a silver platter. It was due to the brawn and muscle of labor and to organization. When you go to a store to buy a piece of goods the storekeeper fixes the price which you must pay or leave the goods alone. But the judge-made law of the land says that the buyer and not the seller of labor shall fix the price.

One Vote to Deliver.

"A dispatch today says that Taft, in a speech, dealt with Gompers in rasping sarcasm and said Gompers could not deliver the entire labor vote to the Democratic party. I have never said I could deliver the labor vote. I would not attempt to deliver it. Taft tries to fool the people with the false and oft-denied charge that I have said I could. I have three sons and I could not and would not try to deliver their votes. I can only deliver one vote—my own—and that one vote is cinched this time.

"Taft says that Labor has the right to organize to sing 'Long live the President,' or to say 'You first, my dear Alphonse,' or to shout 'That is a good fellow,' or as a mutual back-scratching society. But he says it has no right to organize for the purposes for which or-

ganized labor stands, and President Roosevelt endorses the Taft injunction policy when he says Taft is right on the injunction question."

Turned Down by Republicans.

Mr. Gompers said organized labor went to the Republican national convention and asked that a plank be inserted in the platform favoring trial by jury in cases where men were charged with contempt of court for the violation of an injunction in a labor dispute.

"But we were turned down. Mr. Van Cleave and his influences kept out such a declaration," he said. "Then we went to the Democratic national convention at Denver and asked the same thing. There we were received and the plank was placed in the Democratic platform. The Democratic party showed us that it was our friend, and that is why we are in this campaign working for the success of the Democratic ticket. Congressman Watson says I am a Democrat, I am not a Democrat. My first vote was cast for General Grant for President in 1-72. I have been offered a Republican nomination for Congress, and have declined to run. I have declined Republican nominations for state senator. President McKinley offered me several good paying, honorable positions in the government service, all of which I declined. Does that look like I am a Democrat?"

Mr. Gompers closed his speech by urging organized labor to vote for Bryan for President. During his speech he was applauded vociferously at times and at the close there was loud cheering.

Escorted to Hall.

Before the meeting opened, Mr. Gompers was escorted by several hundred union labor men and a band from the English Hotel to Tomlinson Hall. Jesse Pigman was temporary chairman of the meeting and explained that the purpose was to have an expression from the highest authority in organized labor circles on the political situation.—Indianapolis News.

538 Witness thinks the speech was made at Indianapolis.

Indiana, on September 29th, during the heated excitement of the presidential campaign. It was a political meeting. The speech purported to be taken from and credit given to the Indianapolis News, as shown by its reading, it bears evidence of having been written by a reporter who was taking parts of it. That it was intended to be a political speech, and was in furtherance of the political campaign to secure the election of a candidate to the Presidency of the party which had more nearly declared for the measures in which witness and associates were interested, and sought to have enacted into legislation by Congress. Is not sure as to how it became to be published in the Federationist. Did not see it at all after it was printed there. The speech was extemporaneous, and what is published, does not even undertake to say it is a correct record of the address. Delivered many speeches during the campaign, sometimes as many as twenty in a day. Did not intend by any utterance to aid, assist, or abet the alleged boycott against the Buck's Stove and Range Company, nor have it in mind. Witness's

idea was to interest his audience, and particularly the labor portion, in support of the ticket he was advocating. Aimed by every honorable means in his power to secure the election of the candidate whose party had declared for the measures he sought to have enacted into legislation.

Witness's attention is called to page 570 of the minutes of this proceeding, containing an extract from the January, 1909, Federationist, as follows:

539 "The argument in the contempt proceedings against John Mitchell, Frank Morrison, and Samuel Gompers to show cause why they should not be punished for violation of the Van Cleave Buck's Stove & Range Company's injunction, closed November 16th. Justice Wright reserved his decision. Up to this writing, December 15th, the decision has not been rendered. In connection therewith the attention of our readers is directed to a letter from our attorneys, Ralston & Siddons, published in another part of this issue."

Witness states that he did not write or publish that *the* for the purpose of aiding, assisting, or abetting an alleged boycott against the Buck's Stove and Range Company, but as a piece or news of an interesting incident.

Witness's attention is called to the following extracts from the February, 1908, Federationist, contained on page 581 of the minutes of this proceeding.

"In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove & Range Company declares that punishment for the violation of the injunction issued by Justice Gould against the American Federation of Labor applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction; that those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the limits of the District of Columbia. Counsel for the American Federation of Labor assure us that this construction of the court's order is accurate."

Witness states that he did not publish that statement with the intent of aiding, assisting, or abetting an alleged boycott against the Buck's Stove and Range Company, but as an interesting piece of news which he saw over the name of the counsel for the National

Association of Manufacturers, or the Anti-Boycott Association.

540 He does not know which it was, or whether both. Witness saw his statement in the official journal of the Manufacturers Association, and he wrote this account of it, and submitted both to his attorneys, and his attorneys stated that his statement was correct, and witness's statement in his own language was a correct construction of the court's order.

Witness's attention is called to the January, 1909, Federationist, page 54, containing parts of the address of Mr. Gompers, quoted, beginning "Now you know the Supreme Court of the District of Columbia", etc., and is asked whether the part referred to, was published by him for the purpose of aiding, assisting, or abetting

an alleged boycott against the Buck's Stove & Range Company and responded that it was not. Witness thinks he may have said, as appears upon page 314 and 599 of the minutes as follows: that is, "We have been called upon to show cause why we should not be sent to jail, and I could not show cause." What witness intended to say, and in all likelihood did say, was that he was charged with editorial utterances, and he did editorially discuss the principles involved in this case and cases out of which it grew, but would not deny that he wrote these editorials. If that was contempt, he could not show cause, and he insisted it was the exercise of his constitutional right of free speech and free press, and that they could not be regarded as in violation of an injunction; that it was within the province of a court by an injunction to restrain in advance free press, and that if any utterance, oral or printed, was injurious or libelous or scandalous or seditious, there was a remedy at law for which the utterer could be held responsible, in civil and criminal procedure.

541 Witness's attention is called to the next sentence, as follows: "The things I have been charged with, I did, I have not denied them", and in response says he had in mind the exact matter to which he has just answered. He did not intend by that utterance to admit that any one of those publications was for the purpose of aiding, abetting or assisting an alleged boycott against the Buck's Stove & Range Company.

542 *Testimony of Samuel Gompers (continued).*

FEBRUARY 7, 1912

(Page 946.) Witness calls attention to the fact that the letter printed on pages 718, 719, and part of 720, of the September, 1908, Federationist, had at its head the name of William J. Gilthorpe.

Respondent's counsel offers in evidence report of Samuel Gompers to the Executive Council, dated September 9, 1908, respecting the decision of Mr. Justice Wright in the contempt proceedings, to which Mr. Darlington objects as all parts of the report bearing on the controversy, so far as he is able to find, are already in. The question was reserved.

The said report is as follows:

Judge Wright's Decision in the Contempt Proceedings.—On Monday, December 21st, our counsel advised me that he had been informed that Justice Wright of the Supreme Court of the District of Columbia would render his decision in the contempt proceedings against Mr. Mitchell, Mr. Morrison, and me and that we were directed to be in court at 10 o'clock on Wednesday morning, December 23d. I advised Secretary Morrison and called up Mr. Mitchell over long distance telephone in New York. He urged that I make an effort to secure some change in the date, as he desired to be with his family for Christmas. I had already requested our attorneys to make the effort but the judge declined to change the time. Mr. Mitchell sent me a telegram again urging me to make another effort so that the date for the rendering of the decision might be advanced

to Tuesday, December 22d, or deferred until a few days after Christmas. I replied by telegraph stating that Judge Wright was obdurate and from what I knew of his frame of mind, his refusal to change the date of the argument in the contempt proceedings for a day so that Judge Parker, who had an engagement to argue a case before the New York Court of Appeals, could come to Washington and make the leading argument, the counsel for the Buck's Stove and Range Company having agreed to the request for a change in date, I declined to ask any consideration at the hands of Judge Wright.

Mr. Mitchell telegraphed our attorneys to make another effort, stating that last year he was in the hospital; that that was the first time he had ever been away from his family on Christmas; that he had made all arrangements to go and was very anxious to be with his family this Christmas; that he would appreciate it greatly if the judge could change the time to either a day before or a few days after the time set by him. Though convinced that the judge would not change the time set by him, our attorneys wrote a letter to Judge Wright, enclosing the original telegram of Mr. Mitchell. The judge sent a peremptory and negative answer.

Your attention is called to the correspondence of Judge Parker and Messrs. Ralston & Siddons and others relative to part of this matter, and as published in the January issue of the American Federationist.

On Wednesday, December 23d, Justice Wright sentenced Frank Morrison, John Mitchell, and me to terms of imprisonment of six, nine, and twelve months, respectively. Appeal has been taken; bond has been filed for \$3,000, \$4,000, and \$5,000, respectively.

In connection with the decision and sentence your attention is directed to the answers which Mr. Mitchell, Mr. Morrison, and I are preparing and the editorials which I may write, as well as to incidents in connection with the decision and sentence and which are not generally known. You may find them interesting.

Since the sentence, the counsel for the Buck's Stove and Range Company, has made application to assess the costs of the prosecution against Mitchell, Morrison, and me, the amount of which we are not as yet aware. Of course, we have authorized our attorneys to prepare an appeal from this decision and sentence. They advise that there are two methods in making the appeal: One, the limited; the other the ample. The limited would involve three or four hundred dollars, which would comprise the printing of the injunction, the petition, the answer, and the court's decision. The other, the better and safer way, would be the printing of the entire record of the same, which involves also the fees of the clerks of the courts, amounting to between seven and eight hundred dollars. These amounts are simply for the right to appeal to the Court of Appeals of the District of Columbia and the printing involved. Of course, it in no way includes other expenses as well as attorney fees or compensation.

In connection with this matter your attention is called to the fact that we have practically exhausted all of our available funds;

the money in the defense fund, under article 13 of the constitution of the Federation is absolutely unavailable; not even if we desired, and I take it we have no desire to touch one dollar, aye, one penny of that fund for any purpose other than that for which the members of our directly affiliated local unions have paid it.

The counsel for the Buck's Stove and Range Company, Mr. Davenport, in an address before the Citizen's Alliance, one of Van Cleave's organizations, some months ago, boasted of his achievements that the legal expenses of the Federation in these suits had already amounted to "more than \$19,000, and yet more to come."

Either one of two courses is open to us. In view of the industrial depression and the large number of men unemployed, it is most improper for us to levy assessments. We should either make an appeal to all labor and our friends for such voluntary financial contributions as they can make to the enormous expense of the legal defense of our case, or we should authorize the abandonment of any attempt at defense and appeal. Whichever course you may determine is the wisest and most practical or inevitable is entirely agreeable to me and I shall willingly abide by it.

Resolution 39, Dealing with the subject-matter of amending the laws to better safeguard the lives of seamen was, as per instructions, furnished to the Hon. Thomas Spight, member of Congress from Ripley, second congressional district of Mississippi, and he was urgently requested to continue his efforts to secure the enactment of the bill H. R. 14655, introduced by Mr. Spight at the last session of the present Congress.

On the first of January Mr. Spight wrote me, stating that he would call the matter to the attention of the committee on merchant marine and fisheries at its next meeting and do his level best to further the principles and purposes of the bill.

Legislative Work. Resolutions 3, 10, 11, 12, 41, 43, 51, 92, and the several other subjects dealing with legislation were all placed in the hands of the legislative committee of the A. F. of L. with instructions to give the various matters the most careful consideration and that every possible effort should be made to secure at this session of Congress the legislation sought by the A. F. of L.

For convenience I quote herewith my letter to the legislative committee transmitting these several matters. It is as follows:

"WASHINGTON, D. C., Dec. 9, 1908.

Mr. Thomas F. Tracy, Mr. Arthur E. Holder, Legislative Committee of the A. F. of L., City.

DEAR SIRS AND BROTHERS: I beg to hand you herewith a number of resolutions adopted by the Denver convention of the A. F. of L. dealing with the various matters of legislation in which labor is vitally interested. The resolutions are as follows:

Resolution 3. Resolving that the A. F. of L. use its influence in order that the Chinese exclusion act be enlarged and extended to exclude all races native to Asia except those exempted by the present terms of the act.

Resolution 10. Endorsing the civil service law and favoring the passage of some suitable retirement bill.

Resolution 11. Recommending the A. F. of L. endorse several bills introduced in Congress in the interests of the post office clerks.

Resolution 12. Resolved, that the Washington, D. C., Central Labor Union petition Congress to enact the illiteracy test into law and to refuse modification of section 42 unless to require better sanitary conditions in the steerage.

Amended by the convention by cutting out the words Washington, D. C., and inserting Denver convention of the A. F. of L.

Resolution 41. Protesting against the still further deterioration of the personnel in our merchant marine and to demand of Congress passage of laws similar to those in vogue in England.

Resolution 46. Condemning the present laws as regards the employment of seamen and urging Congress to amend same, providing higher qualifications in seamen.

Resolution 92. Recommending the reindorsing of its opposition to compulsory arbitration by the A. F. of L., and also recommending wherever possible voluntary arbitration in disputes between workmen and their employers.

The convention also directed that every effort should be made to secure the passage of a comprehensive general employers' liability law.

The convention further directed that a bill should be drafted providing for an appropriation to cover the cost of enforcing the child labor law in the District of Columbia, and efforts be made to secure its passage at this session of Congress.

It also directed that our efforts be continued to secure the passage of the bill introduced at the last session of Congress by Congressman Wilson to amend the Sherman anti-trust law.

It also directed that efforts should be continued to secure the passage of our anti-injunction bill commonly known as the Pearre bill.

The convention also directed that efforts be continued to secure the passage of our eight hour bill.

It was further directed that efforts should be made to have Congress enact a law making February 12th, Lincoln's Birthday, a national holiday.

By resolution 51 it was directed that efforts should be made to secure such legislation from the Federal Congress and from the executive heads and the governmental departments that they shall provide for such laws and regulations as will afford workmen engaged in the construction of work undertaken by the federal and state governments as well as by private corporations such quarters and sleeping accommodations as will conform to some such reasonable degree of sanitary and healthful conditions as can be provided in the prosecution of such work.

You will please give these special matters your consideration and attention and report to me in writing from time to time as to the progress which is being made. Fraternalty yours,

(Signed)

SAMUEL GOMPERS,
President A. F. of L.

P. S. Of course, you will understand that the legislation for which the A. F. of L. has heretofore declared, or against the enactment of which it has protested, form instructions to the officers and representatives of the A. F. of L."

I also transmitted resolutions 41 and 48 to the committee on merchant marine and fisheries of the House of Representatives, to the committee on commerce of the Senate, and to the commission on laws relating to the safety of life at sea, and also to the President. I am advised by the President's secretary that the matter would receive his careful consideration. The chairman of the committee on the revision of laws relating to safety of life at sea advises me that the subjects-matter of these two resolutions, which have previously received consideration by the commission, will again be brought before the commission, together with the resolutions. At the time this report is dictated, no advice has been received by me as to what action has been taken by the Senate and House committees.

The official reports of the legislative committee as made from time to time will as usual be submitted to you and published in the American Federationist.

I have directed the legislative committee to make arrangements with the chairman of the judiciary committee so that the members of the E. C. may have the opportunity of conferring with the committee relative to the necessary legislation, and particularly dealing with the subject of the amendment to the Sherman anti-trust law and with the bill limiting and defining the issuance of injunctions.

The report of the committee on president's report, dealing with these several matters adopted by the Denver convention, provides:

"The president under this heading submits for our further endorsement or such action as we shall deem proper, the Pearre bill. We recommend that it be re-endorsed.

"He further submits a copy of the British trades dispute act, and calls attention to the fact that by this act the joint funds of the organized workers of Great Britain have been placed in proper security. We recommend that the E. C. obtain competent legal advice upon the advisability or the necessity of inserting the principles contained in the trades dispute act in either the Wilson (H. R., 20,584) or the Pearre bill (H. R., 94).

"We further recommend that the E. C. be instructed to confer with the representatives of other organizations, with a view of prevailing upon them to give their full and undivided support to this important legislation."

Realizing that the E. C.'s time would be largely taken up with other important matters that it would be exceedingly difficult to provide for a conference this week with the representatives of the railroad brotherhoods, and other organizations, on December 11th I issued an invitation for a conference at this office on Monday evening, January 4th. The conference was held and the following gentlemen were present:

Mr. H. B. Perham, President, Order of Railroad Telegraphers.

Mr. W. S. Powell, Vice-President, Maintenance of Way Employés.

Mr. F. T. Hawley, President, Switchmen's Union.

Mr. A. E. Holder, Mr. Thos. F. Tracy, Legislative Committee A. F. of L.

Mr. Frank Morrison, Secretary, A. F. of L.

Mr. Jas. O'Connell, President, International Association of Machinists.

Hon. T. D. Nichols, House of Representatives.

Hon. W. B. Wilson, House of Representatives.

Hon. Jas. T. McDermott, House of Representatives.

Mr. J. J. Hannahan, Grand Master, Brotherhood of Locomotive Firemen and Enginemen.

Mr. H. R. Fuller, Legislative Representative, Railroad Brotherhoods.

J. Ralston (firm of Ralston & Siddons).

Mr. F. L. Siddons (firm of Ralston & Siddons).

Mr. Edw. J. Gavegan, Attorney, New York City.

The conference lasted from 7.30 in the evening until nearly 2 o'clock in the morning. All gentlemen present were furnished with a copy of the Wilson and the Pearre bills and the British trades dispute act, 1906, and they were requested, and promised, to submit their views to me. Of course, not much time has elapsed between the conference, the return home of these gentlemen, and this meeting of the E. C., but what has been received will be submitted to you hereafter. If there be time to condense and codify what has been submitted, I shall do so, and also submit it to you for consideration. We should unquestionably give the subject-matter our very serious and faithful consideration during this meeting. Recent events have but demonstrated the apprehension we feel and the judgment we formed and declared as to the rights of the workers as men and as citizens equal with all others, as well as the rights of the voluntary associations of labor to their normal activities and functions as now denied by the Sherman anti-trust law.

Incidental to this matter, your attention is called to the fact that testimony by commission has been taken in the suit of E. Loewe & Co. vs. the United Hatters of North America for \$21,000. The testimony has been taken by commission these past several months in several parts of the country, including California. Secretary Morrison and I were both subpoenaed by the plaintiffs. He was on the stand for three days on direct examination and I for two days on direct examination, and he, as was I, as witness for the plaintiff. Practically the entire history of the Federation in its activities for the benefit of our fellow-workers has been incorporated in the testimony. The cross-examination of Secretary Morrison and myself will begin January 23d. It is expected that the trial of the suit will begin in the federal circuit court of Connecticut in April.

Then, again, in connection with organized labor and the Sherman anti-trust law, I deem it my duty to call your attention to the fact that the case of the 75 indicted union men of New Orleans which during the campaign of 1908 the federal administration declared would not be pressed has been called up, and I am advised

that prosecutions to punish these men by fine and imprisonment will soon come to trial.

It might not be amiss to say that during the year 1908 I made between 80 and 100 public addresses, involving traveling over a very wide range of territory; that I was forced to decline about double that number of invitations; that I held between 350 and 400 conferences, and appeared 12 times at hearings before congressional committees having under consideration the various bills in which labor is interested. Then, again, as you recall, for a number of days I was on the witness stand in the taking of testimony in the Buck's Stove and Range Company injunction case, as well as the contempt proceedings arising therefrom, and also in the taking of testimony in the Loewe case. All of this in addition to the regular work of the office, including editing the American Federationist.

The work has been arduous and exacting, but through it all I have endeavored to devote to it every power of which I am capable.

There are many other matters to which reference should be made, but I have endeavored to confine this report somewhat within the limits of your time.

Faternally yours,

SAM'L GOMPERS,
President A. F. of L.

544 The above report was accepted and made part of the record. Witness made that report to the executive council, and is responsible for its publication. It was not made with the intent to aid, assist, or abet an alleged boycott against the Stove Company. Was reported to give the executive council and published to give the readers opportunity of understanding the exact status of the proceedings—a case which the defendants had undertaken to make a test before the courts.

Mr. Parker offers in evidence the editorial by Samuel Gompers, entitled Justice Wright's Denial of Free Speech and Free Press, and already in part in evidence (folio 122):

"We will speak out, we will be heard,
Though all earth's systems crack;
We will not 'bate a single word,
Nor 'take a letter back."

Two days before Christmas—that is, on December 23, 1908—Samuel Gompers, John Mitchell, and Frank Morrison were sentenced to imprisonment for one year, nine months, and six months, respectively, by Justice Wright of the Supreme Court of the District of Columbia for contempt of court upon the charge that they violated the terms of the injunction issued by that court upon the petition of the Buck's Stove and Range Company of St. Louis.

The Scene in Court.

The scene for the culminating act of this judicial drama was set by order of the court. Justice Wright directed that three seats be

placed side by side and directly facing him. The "culprits" were ordered to occupy them. It was at once apparent to all in the crowded court room, including the defendants, who were so deeply interested, that the flashing eyes, the twitching lips, and the contemptuous frown of Justice Wright but poorly concealed a volcano of surging, relentless hatred. The judge sat in silent attitude for fully a minute, riveting his fierce gaze upon the defendants. It was quite evident that the judge intended to make them quake or quail and to work himself up to the pitch to sound the defendants' condemnation. At last he found his voice. It came in low, quivering, yet incisive tones. As he progressed with the delivery of his decision his voice rose and fell. At times it was pitched to a high key, at others it was scarcely more than the moving of his lips with teeth set fast, hissing his bitter invective.

Read the decision of Justice Wright (published in another part of the issue of the American Federationist); read it carefully, read it aloud and employ all the arts and devices of the trained actor and the reader if one would have some conception of the "calm and judicial" temperament displayed by him in dealing with a grave case of the first importance.

545 So intemperate and vindictive a spirit was displayed by Justice Wright in his every word and tone that even newspapers not friendly to Labor felt obliged to apologize for his manner. The New York Evening Post spoke editorially of "the somewhat turbid rhetoric and occasional excess of heat in Judge Wright's opinion."

The Outlook Magazine said in commenting on Justice Wright's manner:

"His opinion illustrates quite as strikingly as any quotation he makes from Mr. Gompers' writings 'the furious way' and the 'turbulence' of spirit and of measures which he condemns in the accused before him. And in the court-room, when the sentence was pronounced, the dignity of language was all manifested by the supposed criminals, and the passion by the Judge."

For fully two hours and twenty minutes Justice Wright continued his arraignment and denunciatory characterization of Mitchell, Morrison, and Gompers; in all that time not a word, not a minor note of the life's work of the defendants to be helpful to their fellows for the common uplift. No; they would lead "the rabble," they would "unlaw" the land, they are public "enemies," their intent was to bring about a "relentless blight" of a "hideous pestilence," they would "smite the foundations of civil government," and would subordinate the "supremacy of law" to "anarchy and riot." They would have their "own furious way;" would have the view of "each distempered litigant imposed on the courts." The "frenzy of their disappointment." These and many other equally illuminating phrases graced the "judicially tempered" decision to which the defendants were perforce compelled to listen for more than two hours.

If the three men had been charged with brutal murder, with ravishment of the innocent, the scene could not have been more

impressively set nor their characters more severely excoriated. No man or set of men convicted by a jury of the most heinous crimes known to man have ever been stigmatized or characterized by a judge in severer terms:

"Everywhere," said Justice Wright, "all over, within the court and out, utter, rampant, insolent defiance is heralded and proclaimed; unrefined insult, coarse affront, vulgar indignity measures the litigants' conception of the tribunal's due, wherein his cause still pends."

Imagine the feelings of Mitchell, Morrison, and Gompers during this tirade of judicial abuse and misrepresentation. Reference has been made to the dramatic character of the court procedure. It was tragic and yet in some respects it was a farce. It is not here necessary to dwell upon the more serious aspects of the situation, but a word as to the farcical phases may not be uninteresting.

When Justice Wright concluded his review of the case upon which his decision was based, he commanded the defendants to "stand up" and asked them if they had anything to say as to why sentence should not be pronounced upon them.

Gompers, Mitchell, and Morrison arose, and each in turn addressed the court. (Their remarks appear elsewhere in this issue of the *American Federationist*.) Then with "great solemnity" Justice Wright expressed his "regret." He said:

Imprisonment the Penalty.

"I regret to have heard nothing save that which amounts to a distinct affirmance of the position which has already been answered by the court's opinion—and unreadiness to abide by the course of the tribunals which are ordained by the supreme law of the land.

"It is the judgment of the court that you, Frank Morrison, be imprisoned in the jail of the District of Columbia, for a term of six months; you, John Mitchell, for a term of nine months; you, Samuel Gompers, for a term of twelve months."

Now anyone would suppose that the regret of Justice Wright was the genuine expression of his mind; that he was open to some sort of modification of sentence dependent upon what the "guilty men" would say. But the following will throw some light on the hollowness and pretense of the formality as well as of his expressed regret. The sentence of twelve, nine and six months imprisonment upon Gompers, Mitchell, and Morrison was imposed exactly 12:40 o'clock noon. More than an hour before that time the newspapers of Washington, D. C., issued bulletins announcing the convictions and sentences; more than a hour before the defendants were asked if they had anything to say why sentence should not be pronounced upon them, the New York City afternoon papers and others throughout the country issued extra editions containing the decision and the sentences imposed upon each man. For fully an hour before, probably the only persons who were ignorant of what the sentences would be, were Mitchell, Morrison, and Gompers.

With these events seething in their minds, the three "condemned" men, the men so recently honored and chosen by the hosts of Labor

to faithfully carry forward the great uplift work of common humanity intuitively turned toward each other, grasped each other's hand and in silence pledged anew their plighted faith.

“For the cause that lacks assistance
For the wrongs that need resistance
For the future in the distance
For the good that they can do.”

Smarting under the indignities heaped upon them, feeling the great wrong done to all Labor, to all the people, as well as to them, yet there was not and is not a particle of rancor or bitterness in their hearts or minds. In the then Yuletide, Gompers, Morrison, and Mitchell faced the world with good will toward all mankind.

The Decision Reviewed.

By Samuel Gompers, John Mitchell, and Frank Morrison.

With the exception of the remarks made to the court as to why sentence should not be pronounced, the defendants have uttered no word in review of this decision. We (Gompers, Morrison, and Mitchell) regard it as an imperative duty we owe to all the people to do so now and here.

547 In considering and discussing the decision rendered and the penalties imposed by Justice Wright, we shall not—even if we were capable of doing so—enter into competition with the honorable court in the use of invective, rancor, or seathing denunciation; we shall, despite the great provocation, at least preserve our dignity. But we do feel called upon most respectfully to dissent from and protest against the court's unprecedented and unwarranted flagellation of the cause and of the people we have the honor to represent. Justice Wright touches upon the real issues of the case, when he says:

“No defense is offered save these. That the injunction:

“1. Infringed the constitutional guaranty of freedom of the press,

“2. Infringed the constitutional guaranty of freedom of speech.”

Fundamental Principles Involved.

The questions involved in this decision are fundamental questions of constitutional liberty. The sentences imposed upon the defendants sink into insignificance when compared with the court's denial of the right of free speech and freedom of the press. If Justice Wright were at all familiar with the history of the labor movement, if he understood its purposes or its ideals, he would have hesitated before exhausting his vocabulary in denouncing those whom he is pleased to characterize as “the throng” and “the rabble.”

Our much-maligned labor movement is, in the language of Gladstone, “the bulwark of democracy.” It has done more than any

other agency to raise to a higher standard of life the working people of our country; it has protected the weak and the helpless against the strong and avaricious; it has taken the child from the mine and the mill and the factory; it has liberated the woman from the garret, the sweat-shop, and the hovel; it stands for education, for religion, and for morality; it has restrained the impetuous and stayed the violent; it has given courage to the timid and hope to the despondent; it has stood for construction and improvement and against destruction and debasement; it reaches out the right-hand of fellowship to the fair and humane employer; it has stood like a rock against the inconsiderate, the grasping, and the inhumane employer; it stands for law and order, it opposes anarchy and turbulence; it stands for progress, for moderation, and for liberty; it stands for self-respect, for decency and dignity. Its members have proved loyal and true to their country in times of peace and in times of war. From the guilds of New England came Paul Revere and the immortal Minute Men. The example set by the union ship caulkers in Boston harbor has been emulated by the trade union workmen in every crisis of the nation's history. We would be unworthy sons of a noble heritage if we should falter now in defending within the law the judicial usurpation of the priceless concepts of freedom which are guaranteed by our constitution to us and to our descendants and to all the people of our country.

By insisting upon our constitutional right to speak and publish (upon responsibility for the abuse of the right and that solely
548 to a jury) we are upholding constitutional guarantees of vital and fundamental importance.

The first amendment to the constitution says:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the rights of the people peaceably to assemble to petition the government for a redress of grievance.

The judge, referring to this constitutional guarantee, says:

So with respect to the inhibition against abridging the freedom of speech and of the press; the constitution nowhere confers a right to speak, to print, or to publish; it guarantees only that in so far as the federal government is concerned its Congress shall not abridge it, and leaves the subject to the regulation of the several states where it belongs.

If this construction of the constitution is permitted to stand, then it logically follows that religious freedom, the right to worship according to the dictates of one's conscience is not a guaranteed right of the citizen, but is subject to the caprice of any judge in any state.

"The right of the people peaceably to assemble and to petition the government for a redress of grievances" according to Justice Wright is not guaranteed to all the people, but is subject to the whim or caprice of any judge. A state judge may deny the citizens the right peaceably to assemble to petition the national government for the redress of grievances.

If Justice Wright's construction of constitutional guarantees is to stand, then to Congress applies the only inhibition of the invasion

of a free press, free speech, free assemblage, religious freedom, and the right of petition. If this be true, what is the logical result? Any or all authorities not directly named in the constitution may deny or abridge these rights. That is, that a judge may do by injunction what Congress is prohibited from doing by legislation.

We are in harmony with the spirit of liberty upon which our Republic is founded, when we assert our right to worship God according to the dictates of our conscience, the right to petition for a redress of our grievances, the right to speak and to print our opinions—being responsible under the law for what we write and speak, pray and petition. These are inviolable constitutional guarantees to all the people of our country. The decision of Justice Wright illustrates the iniquity of these "contempt" proceedings and their inharmony with the spirit of liberty and of the constitution.

Let us consider the position of a defendant who is charged with crime as contrasted with the position of a defendant who is charged with violating an injunction. The man who is charged with crime may have murdered his own mother, he may have strangled his own child, he may have outraged the chastity of a pure woman; and yet this monster is under the law entitled to the presumption of innocence until he has by due process of law, been adjudged guilty. He is guaranteed a trial by an impartial jury of his peers; if he believes and states that the judge of the court is prejudiced against him, he may demand and secure a change of venue and be tried before the judge of another court. Indeed, it is not unusual

549 for a man of this character to have his trial in some other vicinity than the one in which the crime was committed; and even though he be guilty of the crime charged against him, every extenuating circumstance is counted in his favor. If he is without means the court will appoint counsel to defend him. He must, in the course of his trial, be confronted by his accusers, and upon them and upon the state rests the burden of proving the charge against him.

The man who is charged with violating an injunction may be and often is a peaceful, patriotic, law-abiding citizen whose life is devoted to the amelioration of the condition of the weak and the helpless. On the application of some unfair corporation which is oppressing its employes, an injunction is issued restraining this man from the performance of duties that are not of themselves in violation of any constitutional or statutory law. This man is charged with violating some provision of the injunction. He is thereupon commanded to appear in court and show cause why he should not be adjudged guilty and punished. Unlike the murderer who is presumed to be innocent until he is proved guilty, this defendant is presumed to be guilty until he can prove his own innocence. He is denied a trial by a jury of his peers; he is not confronted by his accusers; he cannot secure a change of venue; he must be tried by the judge whose dignity has been offended, or, at the best by an associate judge of the same court; he has no protection against either the bias or the animus of the court; he is at the mercy of a judge who may or may not be disinterested, judicial, or dignified.

Says the law to the defendant: "You are presumed to be innocent until, after a fair and impartial trial, you are adjudged guilty by a jury of your fellow-citizens."

Says the injunction to the defendant: "You are presumed to be guilty until you can prove your own innocence. You are commanded to appear before the offended court to show cause why you should not be sent to jail."

In publishing this editorial we may be held to be in additional contempt, but, if so, we are willing to accept the consequences. It may be necessary to the preservation of the liberties of the people that a judge should be disobeyed. Judges sometimes usurp power and become tyrants. Disobedience to a tyrant is obedience to law.

We wish to point out how despotic and unwarranted and unfair have been the methods of the prosecution. We are penalized for printing the same character of news and comment which every other newspaper and magazine in the country published with perfect freedom.

If our speeches and our writings have been unlawful, libelous or damaging to the plaintiff there is one legal way of punishing that offense—that is, a suit for damages and a trial by jury, in which not only the fact of the spoken words and the publication would be passed upon, but we would also be allowed to offer whatever there might be of explanation or justification for our course.

Our fundamental law authorizes no other process for the punishment of any abuse of freedom of speech or of the press. Our system of law does not authorize prohibition of lawful rights by injunction and punishment subsequently by proceedings for contempt and at a hearing before the judge where the only question considered is the mere fact of utterance and publication.

550 If we had abused our right of free speech or free press in our references to the Buck's Stove and Range Company, peace and order and good citizenship required that we should have been proceeded against—not by injunction—but by the due form and process provided by statute law.

This is a broad question of right and law and order. There are no mystifying technicalities about it. They are equally well known "in Texas, Florida, Maine, and Oregon" as they are in the District of Columbia. All who know anything of our country's history knew that judge-made prohibition of freedom of speech and freedom of press can issue only in defiance of fundamental American law. Congress can not even make such prohibition. May judges then command what Congress is powerless to enact? It appears from Justice Wright's decision that he believes this can be done. Judicial usurpation of power is a most serious matter. Jefferson warned posterity that the greatest danger to our free institutions lay in the likelihood of this usurpation.

When a judge issues an injunction—like that of the Buck's Stove and Range Company—it is the judge who defies the law, and not the citizens who refuse obedience to his injunction mandates, which would deprive men of their constitutional rights.

Justice Wright seemed to expend more of his thought on the judi-

cial virulence of language with which he sentenced Mitchell, Morrison, and Gompers to prison than upon careful consideration of the vital issues of the case.

Apparently with deliberate design to assist in insidiously undermining constitutional rights by judicial usurpation, Justice Wright says that this injunction only "incidentally" prohibits the exercise of free speech and freedom of the press. How can it be "incidental" when the prohibition is absolute and permanent?

Unless constitutional rights are secure from "incidental" as well as every other sort of invasion they are not secure at all. If an injunction may be issued prohibiting freedom of speech and of the press for the purpose of protecting an employer's alleged "property rights" in labor, then there is no limit beyond which our judges may not go in destroying the freedom of the press and the freedom of speech.

Grant for even a moment that the courts have a right by injunction to enjoin from publishing, and what will be the logical result? It will come to pass, as one already said, the press can not expose political corruption because it hurts some "boss." It can not criticize an hostile or indifferent administration because the Chief Executive would be annoyed. The Congressional Record may be censored because some Senator or Representative has the courage to uncover the lawlessness of powerful wrongdoers. Even the President's message may be interdicted. The press will not dare to expose the horrors of child labor and the exploitation of helpless women workers.

Forbid us to state any one unpleasant truth and the way is opened to go the whole limit of press censorship and prohibition. As we said in our statements to the judge, "the freedom of the press was given not that we might say the pleasant things, but that we might say the things which are unpleasant that we might criticise the wrong; that we might call attention to truths as yet unrecognized; that even if we might do a wrong we would better have the right and be subject to punishment than that the freedom to print and speak be denied. The injunction denies in advance the right to speak or print. It puts an absolute censorship on press and speech.

Thoughtful citizens will not, we trust, belittle the importance of the issue because it had its inception in a labor union difficulty. Whatever the Mitchell-Morrison-Gompers case was in the beginning it is no longer in essence a labor controversy. The immeasurably higher question has been raised of whether the great traditions and guarantees of American liberty shall be destroyed. The vital facts in the case should be clearly comprehended and all prejudice laid aside in face of the solemn fact that the liberties of all our people are invaded.

We are confident that the people of our country, that public opinion—that court of last resort—will pronounce an adverse verdict on this judicial denial and prohibition of freedom of speech and of the press.

The people of our country are aroused as never since the civil war and the abolition of slavery. They are alert to the danger which

threatens. They will not allow themselves to be lulled into a fancied security because this decision does not at present happen to touch each one of them personally. No one can tell when this decision will be cited as the precedent for additional invasion of liberty.

Early History of the Case.

Justice Wright said in the opening paragraphs of his decision: The defendants, Samuel Gompers, Frank Morrison, and John Mitchell are charged with wilfully violating the terms of the preliminary injunction herein heretofore issued after a hearing before Mr. Justice Gould. The matter of the charge is not to be understood or intelligently determined without a comprehension of the status of persons and conditions at the time the injunction issued, and these in turn can only be come at by a good understanding of the nature and cause of the original controversy between the parties and the situation which had developed from the confessed boycott, established against the plaintiff and its customers by the defendants and others.

Any reasonable person would suppose that in order to arrive at "a good understanding of the nature and cause of the original controversy" Justice Wright would have cited and weighed the evidence given by both sides. Instead, he quotes approvingly the testimony given in behalf of the Buck's Stove and Range Company on the original injunction and in the contempt proceedings, and practically nothing from the reply made by defendants.

This testimony was misleading in many instances and we have shown it to be so, particularly in its intent. The American Federation of Labor directed its defense entirely against the unconstitutionality of the injunction itself. The American Federation of Labor retained eminent legal counsel and was advised that the original injunction issued by Justice Gould was in opposition to the constitution and therefore null and void.

Justice Wright declares that no effort was made by the American Federation of Labor to investigate or confer or adjust the original trouble with the Buck's Stove and Range Company, before the firm was declared "unfair." He is entirely mistaken, yet he makes much of this wrong assumption and upon it bases much of his decision. If he had even read carefully "Appendix B" which he cites in his decision to bolster up his own wrong contention he would see that that very quotation (though inaccurate in many particulars) shows the most earnest and sincere efforts on the part of the union representatives to adjust the difficulty and that Mr. Van Cleave resorts to the subterfuge of saying that if the foreman had allowed the nine hour day to the polishers he did it without his (Van Cleave's) authority. This is so puerile and so obviously inaccurate as to require but little notice. Everybody knows that a foreman would not dare do such a thing without an order from his employer. Then Mr. Van Cleave tries to wriggle out of facing the situation by saying that he is a member of the Defense Association (employers' union) and it will have to settle the difficulty. The union representatives forced him to admit that he

knew that quite a number of employers in the Defense Association had conceded the nine hour day, hence there could be no objection from it if he did likewise. Then Mr. Van Cleave declared that he could not grant the nine hour day because all the stove works "in his neighborhood" were working ten hours. When it was pointed out to him that the Belleville works in his neighborhood had conceded the nine hour day, Mr. Van Cleave replied:

Van C.: Is that so? Well, it is a very unfair proposition for the Belleville Stove Works to do this, if it is true, and in all probability they were forced to do so, but when they tried to do it here they ran up against a different man.

So, having shown his unfairness and unwillingness to be frank and sincere from any point of view, Mr. Van Cleave closed the conference by saying (in reply to Mr. Becker's suggestion that the patronage of the stove industry is mainly from working men, and they would prefer to buy goods made under fair conditions): "Now, there is no use for you to talk like that to me. Gentlemen, you can do as you please about it."

In other words, the workmen must accept whatever conditions and hours Mr. Van Cleave chose to impose, and if they didn't like that they could do whatever else they pleased. The haughty Mr. Van Cleave, by his own words, rather invited them to see what they could do about it.

This, for the appendix which Justice Wright adds to his decision, to support his own contention that Labor made no effort at adjustment.

In giving any credence at all to "Appendix B," which Justice Wright approvingly quotes as absolutely true, it must be borne in mind that if a stenographer was present to take down the spoken words in the conference, the stenographer was Mr. Van Cleave's; that the transcribed notes were never submitted for verification or correction to the workmen's representatives who participated in the conference. Is it difficult to conceive that Mr. Van Cleave "revised" such a report to suit his own purpose? Even as it stands, Mr. Van Cleave is convicted of evasion and double dealing.

In his review of the case Justice Wright utterly failed to make mention of the important testimony of Mr. Joseph Valentine, who, as representative of the American Federation of Labor, sought to

553 have the trouble adjusted before the firm was put upon the "We Don't Patronize" list. Mr. Valentine is a member of the

Executive Council of the American Federation of Labor, and also president of the Iron Molders' Union of North America, a man of great experience in labor matters, a man whose honesty, sincerity, and good judgment are conceded by employers who have conferred with him and adjusted trade disputes throughout the length and breadth of the land. Mr. Valentine's testimony is absolutely unimpeachable from the standpoint of truthfulness and is most important, as disproving many of Mr. Van Cleave's distortions of fact, and also as showing how strenuous were the efforts of organized labor to honorably adjust the difficulty before the Buck's Stove and Range Company was placed upon the "We Don't Patronize" list. Every effort made by Mr. Valentine to adjust the differences

between labor and Mr. Van Cleave was made at the request, in good faith, and as the authorized representative of the Executive Council of the American Federation of Labor, of which Mr. Gompers was president. The efforts of the representatives of the committee of the St. Louis Trades and Labor Assembly were reported to President Gompers and carefully considered by him. Hence the quotations (misleading because wholly apart from their context) of Justice Wright in Appendices A and B, are unwarranted by the facts and form no basis for a fair judgment of the merits of the original case. Yet Justice Wright does not even intimate that he omitted anything or that there was the slightest justification for the course taken by organized labor.

Justice Wright declares that the Buck's Stove and Range Company operated a so-called "open" shop, that it had not discriminated between union and non-union workmen. On this point we quote from the original testimony pages 403 and 409 taken in the case after Justice Gould's temporary injunction was granted:

Direct examination by Mr. DAVENPORT (counsel for Buck's Stove and Range Company):

Q. 1. What is your full name, please?

A. Robert Fisher.

Q. 2. What is your age, Mr. Fisher?

A. Twenty-seven years.

Q. 3. And where do you reside?

A. St. Louis.

Q. 4. And are you connected in any way with the Buck's Stove and Range Company of St. Louis, Missouri?

A. I am foreman of the plating department—plating and polishing department.

Q. 5. The plating and polishing department?

A. Yes, sir.

Q. 6. How long have you occupied that position?

A. Since February, 1906.

Cross-examination by Mr. RALSTON (counsel for A. F. of L.):

X Q. 18. At the present time there are no members of organized labor employed within your knowledge of that establishment?

A. No, not within my knowledge; no.

X Q. 19. If any one presented himself, would you employ him?

A. At the present time, no, sir.

X Q. 20. You would not?

A. No, sir; I would not.

X Q. 21. By whose instructions would that be?

A. That would be according to the instructions I received from headquarters at the present time.

554 X Q. 22. When were these instructions given?

A. They were given after that—well, I don't know the exact date—let me see—it was long after the strike was settled—I can't state the month.

X Q. 23. Well, about?

A. Let me see. Well, it was towards the latter part of the year.

X Q 24. Which year, 1906?

A. Of 1906, yes, sir.

(The strike occurred August, 1906, after the refusal of Mr. Van Cleave to concede the nine hour day.)

Here we have from the testimony of Mr. Van Cleave's own foreman the admission that the Buck's Stove and Range Works discriminated against union men for over a year before the injunction was granted. This pretty thoroughly disposes of one of the Van Cleave assertions. Had we space we could analyze each one and show its distortion of fact and the bitter resentment against Labor which underlies every allegation made by Mr. Van Cleave and accepted by Justice Wright.

Justice Wright approvingly quotes Mr. Van Cleave as saying that the workmen in attempting to establish the nine hour day were robbing their wives and little children. That has not been the history of the shorter workday in this or any other country. A reduction of the hours of labor from ten to nine or eight has always been accompanied by better conditions for the families of the workers and by an improvement in wages and in their moral and intellectual standards. Mr. Van Cleave knows very little about the trend of modern economics, so he may have been ignorant of this fact, but from his misrepresentation in other directions, we may reasonably conclude that in this instance he really desired to drive the best pieceworkers at their highest speed for ten hours in order that they might make such a good showing in wages that the price per piece could then be cut and the average worker would soon find himself earning a pittance and the very fastest workers would put in their ten hours with no better results than if they worked nine or eight hours.

This has always been the history of long hours and piecework. But Mr. Van Cleave has shown a regrettable tendency to follow in the footsteps of every established economic wrong that he can discover.

Justice Wright, in his review of the case, omitted a vital fact, a fact which changed the whole aspect of the case and left only the higher constitutional issues to be regarded.

The fact to which we refer is this:

When Justice Gould's temporary injunction order came into effect—that is, on December 23, 1907—the American Federation of Labor complied with it and removed the Buck's Stove and Range Company from the "We Don't Patronize" list, and it has not been printed on that list since that time.

We did not concede thereby that we were wrong in placing the firm upon that list, but we took this action in order to rid the case of all technicalities, pending the appeal to the higher courts and to make perfectly clear that the injunction in prohibiting free speech and freedom of the press had invaded so important a constitutional right that the original issues sank into insignificance.

555 Thenceforth, the only way in which we could be charged with violating the injunction was on the theory that we protested against its denial of the right of free speech and the freedom

of the press (see original injunction quoted in Justice Wright's decision).

The "unfair" notices issued by unions and their persuasions and the letters from business firms to the company upon which Justice Wright lays so much stress have nothing to do with the present case. In any action they took as to the bestowal of their patronage, our unions were only availing themselves of what they believed, and still believe, and what we contend to be their constitutional right to bestow their patronage where they pleased and to state why they did so.

It must be observed that the American Federation of Labor did not initiate a "boycott;" it simply approved the action of one of its affiliated organizations, and that at best or worst it was a primary "boycott," not the "secondary" one to which so much cant and sophism has been applied.

Justice Wright, however, knew that this question was not really the one at issue for he says (after alleging everything which could possibly prejudice the public against the action of the union):

Then dissertation over the philological import of "boycott" is not proposed; rather, deliberately laid aside; lest the enormities of fact be blanketed by terms, and the conclusions deduced from them hereafter be sought to be juggled from their true foundation by some empty warfare over words; whose discovers the foredescribed enterprise to run along with his own conception of "boycott," as well as he of sensibility so refined as to be agitated at the association of such doings with so gross a term, will be conscious of no conflict against their respective opinions on the point.

We hope it may not be deemed disrespectful on our part to say that we fear we may not grasp the full import of the above quoted rhetorical outburst. We infer, however, that Justice Wright intends to say that he will not further discuss the boycott and we leave our readers according to their tastes in digesting redundant verbiage to discover whatever else may lie in the paragraph.

Next Justice Wright asserts that the owner of a business has a "right" in the patronage of the public, and that this constitutes "property" because a purchaser is sometimes willing to pay a sum for this "good will."

For the moment passing over the fallacies of the above argument we point out that Justice Wright takes this position because from no other point of view can he find the grounds to condemn the defendants, because they and other citizens have been guilty of withdrawing their patronage and stating why they did so.

But what property right can anyone hold in patronage which may fluctuate or be transferred at the whim or fancy of any or all patrons? This confusion of moral and legal rights is hardly excusable on the part of a judge who assumes to speak authoritatively upon the sociological aspects of this case.

Justice Wright charges that the failure of the public to buy Buck's Stoves and Ranges caused certain retail dealers to break their contracts with the Van Cleave company. If it did, that was a matter to be settled between the company and its customers in any way they

556 saw fit. There are proper and adequate forms of law and certain penalties attaching to the breach of contract. These could have been invoked by the company against such merchants, and presumably damages recovered if the case were proved. Why resort to an abuse of the injunction power and consequent contempt proceedings?

The acts of the members of organized labor and their friends, while possibly inconvenient to the plaintiff and perhaps tending to lessen its business, were in themselves not illegal. If the company employed union labor it would advertise the fact and in every way attempt to make that a basis for increased patronage among working men. When Van Cleave refused to give union conditions the advertisement of that fact was neither a conspiracy nor a crime. Many a business man uses far more drastic methods in order to get business away from his competitor, yet who ever heard of the Standard Oil or any other trust being enjoined and penalized because it undersold an independent competitor and ruined him and drove him out of business? It verges upon absurdity when such a term as "conspiracy" is used to stigmatize the exercise of a perfectly legal right.

Justice Wright quotes at some length from newspaper accounts and from the report of Samuel Gompers, president of the American Federation of Labor to conventions in years preceding the issuance of the injunction to show that there was a "predetermination to violate it."

We believe that the public generally will agree with us that such quotations can not possibly be any proof that the injunction was actually violated.

In order specifically to point out some of the manifest errors into which the court has fallen, as an illustration, take the case of Mr. Mitchell. He is charged with having "signed, with full knowledge of its contents, the 'urgent appeal' which accompanied the twenty-seven odd thousand circular letters to the various secretaries * * * with full knowledge of their contents, counselling their distribution." This "urgent appeal" and accompanying circular is presumed to have originated from the Norfolk convention of the American Federation of Labor, which was held in November, 1907. The facts are that Mr. Mitchell was not present at the Norfolk convention, did not attend any session of the Executive Council of the American Federation of Labor, either then or at any subsequent meeting at which the "urgent appeal" was under consideration. Mr. Mitchell did not sign or have knowledge of the preparation or the circulation of the "urgent appeal." If this case had been tried by a jury it would have been easy to demonstrate the falsity of this allegation against him.

Mr. Mitchell is charged with having assisted in the distribution of a certain issue of the American Federationist. The facts are that Mr. Mitchell had no knowledge whatsoever of the matter contained in that number of the American Federationist; he did not participate in its preparation or distribution.

Mr. Mitchell is charged with and admits having presided at a convention of the United Mine Workers of America at which a reso-

lution was adopted declaring as "unfair" the products of the Buck's Stove and Range Company. It was Mr. Mitchell's duty as
557 president of the miners' organization to preside over this convention. He had no knowledge that a resolution upon the subject was to be considered, and when it came before the convention he was so little impressed with its significance that he did not even remember the subject of the resolution until the contempt proceedings were instituted. However, even though he were conscious of the full import of the resolution referred to, he committed no offense against the law by retaining his position as presiding officer of the convention when the resolution was adopted. He had, of course, three alternatives, none of which a self-respecting man could have availed himself. He could have resigned his position as president of the United Mine Workers of America, or he could have called some other member to take the chair, thus shirking his own responsibility by placing it upon the shoulders of another, or he could have become the advocate and defender of the Buck's Stove and Range Company and opposed the passage of the resolution. The injunction did not require Mr. Mitchell to advocate the cause of this concern; he was not commanded to defend its attitude in the controversy with its employes; but it seems that his failure to do constituted an offense against the court, for which he is sentenced to prison.

From the foregoing it will be seen that Mr. Mitchell was not guilty even of the charges upon which he has been convicted. It is not material that he would have signed and assisted in the distribution of the various circulars if he had not been confined in the hospital or otherwise prevented from attending the meetings of the Executive Council; the fact is, he did not.

The judge quotes a paragraph from Mr. Mitchell's book on "Organized Labor," published in 1903, and makes that a basis for conviction of contempt of an injunction issued five years later.

As a further illustration, take the case of Mr. Morrison. He is secretary of the American Federation of Labor. The charge against him is that he caused to be mailed the printed official proceedings of the Norfolk convention and the official magazine the American Federationist, as was his imperative duty. If he had placed in the mails matter which was libelous, treasonable, or seditious, he would be equally responsible with the author of such documents for those acts; but the freedom of the press and the freedom of speech involves the distribution, through lawful channels, of that which may be printed or uttered. He signed the urgent appeal, but pray, after all, in what does the urgent appeal offend? The American Federation of Labor, its officers, its affiliated unions, their members, friends, sympathizers, attorneys, and agents throughout the length and breadth of the country, had an unwarranted injunction served on them, enjoining them from doing things they had a perfect legal right to do.

The American Federation of Labor is not a monied institution. It has little or no funds of its own, and it was necessary to send out an urgent appeal to the men of labor to make voluntary financial

contributions, as is now being done, in order that the rights of the men of labor and the constitutional guarantees of free speech and free press might be vindicated before the courts. Indeed, the very fact that the men of labor endeavored to secure means by which their rights might be protected before the courts is made the main foundation upon which the contempt proceedings were brought.

The guarantees of the freedom of press are not confined to the daily press, weekly or monthly magazines, but apply with equal force to pamphlets, brochures, or circulars. Those violating law—those who express seditious sentiments or publish slanders or libels—do so at their peril, being responsible for their utterances. The responsibilities and perils are in civilized countries regarded as the greatest preventatives of the abuse of the freedom of speech and of the press.

It is something not yet fully understood, even by Justice Wright, how perfectly safe freedom is.

In the case of Mr. Gompers, in addition to what has already been stated, as soon as the injunction became operative he took the name of the company in question from the "We Don't Patronize List" and from that time until this the name of the company has not appeared thereon. He discussed the injunction and the principles involved in the injunction, both in print and upon the platform. There was no intent to defy the order of the court by calling attention to the violation of fundamental rights of citizens, but he hoped thereby to arouse the public judgment and conscience in furtherance of securing remedial legislation at the hands of the only power possessing it—that is, the Congress of the United States.

What other method is open to the people of our country for remedial legislation from fancied or real wrongs than by a public discussion of our contentions through the press and upon the platform.

Some carping critics have said, "why not obey the terms of the injunction until the courts of last resort shall have rendered their decision?"

We answer that such a course was absolutely impossible. It would have perverted and suppressed the lawful proceedings of a convention of the American Federation of Labor, a lawful gathering and body. It would have conceded the surrender of the principles of freedom of speech and of the press. It would have deprived the men of labor of the right of calling the wrong to the attention of the people, aye, it would have prevented the men of labor even from making an appeal to Congress or from giving the grounds or furnishing the arguments upon which they base their claims for congressional relief. It must be remembered that the defendants, their friends, sympathizers, agents and attorneys were enjoined from mentioning directly or indirectly, in printing, in writing, or by word of mouth, the original grievance, the original contention, the injunction, or anything in connection therewith.

But let us see whether the contentions of the critics to whom we refer are justified. A case in point is recalled. About twenty-one

years ago the city council of Lincoln, Nebr., was investigating charges made against a police magistrate. The attorneys for the police magistrate secured a temporary suspension of the investigation and before the investigation was resumed secured from Judge Brewer, then on the circuit bench of the United States, an order restraining the city council from the removal of the offending official. The restraining order was made returnable at a date about two months away. If the council had obeyed the injunction, 559 considerable time would have elapsed, and then if the temporary injunction had been made permanent, an appeal would have been taken, and by the time the magistrate's term had expired a final decision might not have been secured. The mayor and council, convinced that Judge Brewer's injunction interfered with the constitutional rights of the city authorities, continued to perform their duties, made the investigation, and removed the official. Judge Brewer cited these officers for contempt, imposed a fine of \$600 on some and \$50 on two others. The condemned men, with only one exception, refused to pay the fine and were sent to prison. An appeal was taken to the circuit court of the United States, which decided that Judge Brewer exceeded his authority in issuing the injunction and declared it void—that is, the defendants acted within their rights in refusing to obey the order. The defendants were thereupon discharged. The one member of the council, who, because of ill health paid the fine rather than go to jail, was reimbursed by an appropriation made by the Congress of the United States (United States Court Reports, "ex parte: in the matter of Andrew J. Sawyer et al., petitioners," volume 124, page 200).

Let us briefly quote other authorities. Here is one of great importance.

"A party can not be adjudged guilty of contempt for disobeying an order which the court had no power to make." (*People vs. O'Neill*, 47 Cal., 109; *Ex parte Thatcher*, 7 Ill., 1671; *Walton vs. Develing*, 61 Ill., 201; *Lester vs. People*, 150 Ill., 408; 41 L. R. A., 375; *Ex parte Grace*, 12 Iowa, 79 Am. Dec., 529.)

We wish to call special attention to our exact position in relation to the charge of contempt. We hold that we can not be guilty of a violation of the injunction, because the injunction being in contravention of the constitution is therefore null and void. We could not very well violate an injunction which has no constitutional standing or existence. Hence, we can not be in contempt. It does not seem that it should be considered evidence of violation of the injunction to publish the fact that the injunction has been issued and to point out what it enjoins or prohibits.

To charge us with contempt because the American Federationist was delivered by mail to some distant points after the undertaking (which put the injunction in force) was filed is making the post office an accessory.

The injunction became operative December 23, 1907, when the Buck's Stove and Range Company filed the bond required by the court. The January issue of the American Federationist was in

the mails before that date. It will be clearly observed that we had no means of knowing when the required bond would be filed or that it would be filed at all. It is rather far-fetched to hold, because we mailed a magazine we had a right to mail that we become guilty of violation of the injunction because it was delivered after the injunction was in force, especially as we had no means of knowing when the injunction would become operative.

We had a right to disregard the injunction in those particulars, of the right of free press and free speech, but we realized at all times that we did so at our peril—that is, the peril of being judged guilty of contempt and of receiving the most extreme sentence which any judge might impose. All this has happened.

560 We realized from the beginning that we might have to sacrifice our personal liberty in order to defend the liberties of the people of our country. We have no complaint to make on personal grounds. We stand ready and willing to serve the sentence imposed if the higher courts shall so adjudge.

We have not asked, and will not ask, for clemency, and we hope our friends will not urge us to pursue such a course. Loving liberty as freemen do—as we do—it can not be difficult to appreciate what incarceration in a prison would mean to us. To ask pardon would render useless all the trial and sacrifice which our men of labor, and our friends in all walks of life have endured, that the rights and the liberties of our people might be restored.

To ask for a pardon would settle no principle involved, would restore no right, would protect no threatened liberty. Such a pardon would only leave the whole case in confusion, and it would have to be fought over again from the beginning.

Let no one imagine for a moment that the principles involved in this case can be settled until they are settled right. Let those who wish to know the feelings aroused by this decision among the men of labor—aye, among our people in all walks of life—read the extracts we publish elsewhere in this issue from the thousands of letters and telegrams which have poured in to us since the sentence.

Lawyers, doctors, ministers of the gospel, men of wealth and leisure, business men representing great interests, patriotic private citizens, associations and organizations representing manifold uplifting activities—all these join with our men of labor in pledging sympathy, co-operation, and financial assistance until the constitutional rights of free press and free speech shall emerge from the censorship and prohibition established by Justice Gould's injunction and Justice Wright's sentence.

We have space for the publication of comparatively few extracts from the enormous number of letters received, yet the perusal of them thrills the heart and stirs the soul and makes even the most unemotional reader feel that the fires of patriotism still burn brightly in the hearts of our people. Many, many men have expressed the wish that they could serve the prison sentence for us. Laborers write, pledging from the pittance they receive, their last dollar to our legal defence.

More significant than even the pledges of personal devotion are

the assurances from many sources that if we are immured behind the prison walls there stand others ready to carry on the struggle for justice and right—aye, even until all the prisons shall be filled.

We sincerely trust that our country may be spared a prolonged and bitter struggle for the preservation of the rights and liberties for which our patriotic forefathers fought; but should such a struggle be precipitated the responsibility will rest with those who attempted to abolish the right of free speech and free press—not with those who resisted the usurpation for humanity's sake.

The full significance of this decision of Justice Wright's should sink deep into the hearts and minds of our people. We
561 believe that the people of this country will not submit to have their constitutional liberties suppressed by a judge-made order.

We are not disrespectful to the courts when we protest against a wrong decision, rather are we helping the courts to maintain their proper dignity by pointing out when a judge steps from the path of dignity and right and justice.

We of the labor movement stand second to none in our reverence for the free institutions of our country, and we are at one with the best thinkers and writers who helped to mold the glorious destinies of this country, when we point out the danger of judicial usurpation and invasion.

Thomas Jefferson said:

It has long been my opinion, and I have never shrunk from its expression, that the germ of dissolution of our federal government is in the judiciary, an irresponsible body working like gravity, by day and by night, gaining a little today and gaining a little tomorrow, and advancing its noiseless step like a thief over the field of jurisdiction until all shall be usurped.

Are not his fears being verified by recent events?

Daniel Webster said:

Given a free press, we may defy open or insidious **enemies of liberty**. It instructs the public mind and animates the spirit of patriotism. Its loud voice suppresses everything which would raise itself against the public liberty, and its blasting rebuke causes incipient despotism to perish in the bud.

Have we said anything more fervent in defense of a free press?

George Washington, referring to freedom of the press in his message, 1792, said:

There is no resource so firm for the government of the United States as the affection of the people, guided by an enlightened policy, and to this primary good nothing can conduce more than a faithful representation of public proceedings, diffused without restraint throughout the United States.

James Madison wrote:

The freedom of the press as one of the bulwarks of liberty, shall be inviolable.

The attempt to suppress constitutional liberty will not succeed in the long run. We will still have our Miltons with their appeals

for liberty and our Garrisons and Phillips with their crusade for human freedom.

There will be more Patrick Henrys and Washingtons and Jeffersons and Lincolns, to carry forward the world-old human struggle for liberty. In all humility, yet if necessary, we shall be proud to tread in the footsteps of that long and splendid procession, winding down the ages of those who have suffered that the torch of human liberty might be passed from hand to hand and thus reach down not only to the people of our own time, but to the countless millions yet unborn.

In another portion of this issue we publish in full Justice Wright's decision finding Samuel Gompers, John Mitchell, and Frank Morrison guilty of violating the injunction obtained by the Buck's Stove and Range Company. We republish the decision from *The Washington Law Reporter*, the official paper of the court. *The American Federationist* is printed at the same office, so we are able to reproduce Justice Wright's decision in the original type as used in the official printed decision. There were a few typographical errors in the original decision, but for the sake of accurate reproduction we refrain from correcting them.

562 (Page 998.) Recalls that editorial. It was not written for the purpose of aiding, assisting, or abetting an alleged boycott against the Company. Had no such thought in mind, or any thought of violating any injunction by its publication. Did not request James Creelman to write the article published in *Pearson's Magazine* on "Mr. Gompers and His Two Million Men." The extracts taken from *Pearson's Magazine* and published in the *Federationist* were not published for the purpose of aiding, assisting, or abetting the alleged boycott against the Stove Company. Creelman for *Pearson's Magazine* seemed exceedingly interested in the active part which witness's associates and himself took in the then presidential campaign, and came to see him, and asked for an interview, saying that he wanted to write up the Federation's campaign and its work, its struggles, methods and aims, particularly in reference to the campaign and the causes inducing or influencing them in entering into it so actively. An arrangement was made for a date a few days later and he spent two half days in witness's office with witness and every facility was afforded him to write as he chose. Witness first saw Creelman's article when he bought a copy of that issue of *Pearson's Magazine*, containing it. The article was copyrighted by the publishers or writers, and witness wrote for permission to republish it in the *Federationist*, and republished it, in its entirety, under the title given it by Creelman. The article was exceedingly illuminating, some of it not so complimentary, but he published it in its entirety for the interest it had to all his
563 people, and as a contribution toward the literature of the campaign.

(Page 999.) Mr. Parker offers in evidence report made to the Executive Council of Federation of Labor, and by it made part of the report of the President to the Convention, to which Mr. Darlington objects because they have no relation to the case. Witness

says that no part of that report was made with the intent of aiding, assisting or abetting an alleged boycott against the Stove Company, or to disobey an injunction, and none of the utterances were intended to be in disobedience to the order of the Court. They were made for the purpose of discussing the subject and principles involved in the case pending, and in regard to the contention labor made.

Mr. Parker reads from page 638 of the minutes of this proceeding, an extract from "Labor's Protest to Congress," appearing in the April Federationist as follows:

"By the wrongful application of the injunction by the lower courts, the workers have been forbidden the right of free press and free speech, and the Supreme Court in the *Hatters' Case*, while not directly prohibiting the exercise of these rights, yet so applies the Sherman law to labor that acts involving the use of free press and free speech, and hitherto assumed to be lawful, now becomes evident upon which triple damages may be collected and fine and imprisonment added as a part of the penalty."

Witness states that "Labor's Protest to Congress" was an address issued to Congress that the working people who had an opportunity of discussing the subject of injunctions issued here and there forbidding publications, felt very keenly, and it was made the subject of discussion for a long period of years among them, resulting in the executive council authorizing witness to notify the representatives of the International Trade Unions of America to a conference held in Washington, March 18 and 19, 1908, where after considerable discussion, a committee was appointed, and reported a document entitled "Labor's Protest to Congress," dated Washington, D. C., March 19, 1908. The names of the participants were signed and printed with the protest in the Federationist, pages 261 to 226. Conference also formulated and adopted, by unanimous vote, signed by all, an "Address to Workers, Issued by Labor's Conference of Protest," addressed to organized laborers and farmers' organizations. The report was not written, nor was the extract inserted for the purpose of aiding, assisting or abetting any boycott said to be against the Stove Company, and with no such thought in witness's mind, and he firmly believes in the minds of any of those who prepared, discussed, or voted for it.

(Page 1003.) Witness says that the document shows what it was—that the conference was called for and decided to enter a protest to Congress because of the indifference, negligence, or opposition manifested toward legislation of remedial and reformatory character which they sought from Congress, and this protest is also presented by the entire conference to the President of the United States, the Vice-President as President of the Senate, and to the Speaker of the House of Representatives, and was discussed with all of them.

Mr. Parker reads in evidence letter from Gompers to De Nedrey, page 390 of May, 1908, Federationist, referred to at page 637 of the minutes, and reading as follows:

565 American Federation of Labor Headquarters.

WASHINGTON, D. C., *April 18, 1908.*

Mr. Samuel De Nedrey, Chairman Committee, Mass Meeting, Columbia Theatre, Washington, D. C.

DEAR SIR AND BROTHER: The invitation to address the mass meeting tomorrow evening came duly to hand, and I assure you that I employ no idle words when I say that I sincerely regret my inability to be with you and our labor men and our friends on that occasion. I have accepted the invitation to address a mass meeting at the Labor Lyceum, Brooklyn, N. Y., on Sunday afternoon, and at the Grand Central Palace in the evening in New York City. In other words, while your meeting will be held in Washington I shall meet with the hosts of labor and our other friends in New York, meet with them to demand the redress and the justice to which we are so fully entitled.

These are momentous times, and they are not merely momentous for the working people, but for all our people, not only of today, but for the future. If through judicial usurpation in the matter of injunctions, or through interpretations of laws, the rights and the liberties of the working people can be shorn from them, it is not difficult to discern that the liberty of all our people is on the wane and that the dangers of decadence in our national life as a republic made up of sovereign, free citizens is but a matter of time. It is by the insidious filching of the liberties of one portion of the people at one time so as to quiet the fears of others, and then taking the freedom of others at another time, that the gravest danger to free institutions is encountered.

I am neither a faddist nor an alarmist. I have faith in the republic of our forefathers. I have confidence in the patriotism, intelligence, and independence of our people, and that right and justice will prevail, and that our freedom will be safeguarded; but we can not afford to defer to another time what must be done now. We must hold to a strict accountability every man in whose hands is vested the power to remedy the wrongs of which we justly complain and to secure and safeguard the liberties and the freedom which are justly ours.

At your meeting let there be no mincing of words, and let the views of labor and labor's friends and the resolutions which your meeting may adopt, ring clear and emphatic; that the workers will not flinch, but manfully stand out for their rights, and that the workers and their friends throughout the entire country shall pledge themselves without regard to party affiliation, without any divergence of opinion, make one common stand and effort, unmasking the open or hypocritical opponent and sending to political oblivion those who, by negligence or antagonism, fail to respond affirmatively and give their full support to the specific measures which labor, in the name of all our people, presents to them for their consideration and action.

Convey to the assembled hosts, if you can, my earnest wish that I

could be with them, and for the triumph in the cause of justice and right.

Sincerely and fraternally yours,

SAMUEL GOMPERS.

President American Federation of Labor.

566 (Page 1008.) Witness says that the address referred to on page 638 of the minutes, being extract from speech made at New York, April 19, 1908, and part of the petition of the Buck's Stove and Range Company, and appearing on page 688 of the September, 1908, *Federationist*, was extemporaneous, and its purpose was to carry out the policy of the conference, to arouse public interest for the presidential campaign, and secure the legislation sought from Congress, and as a preliminary to it, to have the interest of both parties, or to political parties centered to the relief which we sought. It was an address which witness thinks occupied an hour and three-quarters, or more in its delivery, and no part was written out in advance. Did not make the speech, or any sentence in it with intent to aid, assist or abet an alleged boycott against the Company, and no such thought was in his mind. It was made in furtherance of the campaign, and for the purpose of securing legislative relief from Congress.

The editorial on page 676 of the minutes of this proceeding, reviewing the decision in the case of *Loewe vs. Lawlor*, known as the *Hatters' case*, nor any utterance in it, was intended for the purpose of a boycott of the Stove Company. Witness did not, after December 23, 1907, write or publish any article with the intent to aid, assist, or abet, or encourage a boycott against the Stove Company. In fact, as stated in one of the editorials, published in the *Federationist*, the boycott was simply an incident and an insignificant incident as compared with the broader question of the right of freedom of speech and freedom of press. There was not one utterance, either

567 in print, or in speeches, or otherwise, made or done for the purpose and with the intent of violating, or evading, in any manner, the preliminary injunction, or any other order, or decree in the *Buck's Stove and Range Company case*.

In the editorial in which witness wrote "Go to — with your injunctions," there was no intent on his part to have the dash. What he intended was that there should be a comma, "Go to, with your injunctions." In other words he had in mind "avaunt," "quit," "stop," but there was no thought in his mind compared to the inference drawn from it. Is not accustomed to using language of that character, either in print, conversation, or on the platform. Reads and is a very great lover of Shakespeare. Had the thought in mind, as he had seen it used there and elsewhere, "avaunt," "quit my sight," "go to with thy prattle." It was intended in that sense, and without intending to be disrespectful.

John Mitchell was not present at the executive council meeting when it was determined to prepare and sign the "Urgent Appeal for the Raising of Funds," and when witness's editorial was submitted for consideration; nor did he sign the "Urgent Appeal." There

was a general understanding when the executive council adopted any motion or proposition, it became effective for the entire council, and Mitchell was not consulted as to putting his name to the "Urgent Appeal." Names were put to the appeal as a mere matter of convenience. It was an understanding in the council that when the majority approved, and it was deemed wise to sign, names should all be signed, except when a member of the council interposed and such an objection seemed to him to be vital, if he objected, his objection was respected, and his name not included. Mitchell did not see the editorial or the "Urgent Appeal" until after the publication.

(Page 1014.) Mr. Parker offers in evidence the order of the Court of Appeals as follows:

"THURSDAY, *March 11th*, A. D. 1909.

"No. 1,916, January Term, 1909.

"THE AMERICAN FEDERATION OF LABOR, SAMUEL GOMPERS, FRANK MORRISON, JOHN B. LENNON, et al, Appellants,
vs.

THE BUCK'S STOVE & RANGE COMPANY.

"Appeal from the Supreme Court of the District of Columbia.

"This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, modified and affirmed as follows: It is adjudged, ordered and decreed that the defendants Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Dennis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, individually and as representatives of the American Federation of Labor, their and each of their agents, servants, and confederates, be, and they hereby are, perpetually restrained and enjoined from conspiring or combining to boycott the business or product of complainant, and from threatening or declaring any boycott against said business, or product, and from abetting, aiding or assisting in any such boycott, and from directly or indirectly threatening, coercing or intimidating any person or persons whomsoever from buying, selling, or otherwise dealing in complainant's product and from printing the complainant, its business or product in the "We Don't Patronize" or "Unfair" list of defendants in furtherance of any boycott against the complainant's business or product, and from referring, either in print or otherwise, to complainant, its

business or product, as in said "We Don't Patronize" or
 569 "Unfair" list in furtherance of any such boycott. The
 costs of this appeal are equally divided between appellants
 and appellee.

Per Mr. JUSTICE ROBB,
 March 11, 1909."

It is stipulated that the opinions of Justice Robt. Van Orsdell and Chief Justice Shepherd, shall be considered a part of the record, and reference had to the reports for the opinions, if used.

By Mr. PARKER: "Will you also stipulate, Mr. Darlington, that the decision of Mr. Justice Wright in the Buck Stove & Range Company vs. The American Federation of Labor case, No. 27,305, Equity, was made and filed December 23, 1908, reprinted in Washington Law Reporter, page 822, Vol. 36."

Mr. DARLINGTON: "In so far as pertinent, it may be read from the printed report of it in the Washington Law Reporter."

Cross-examination of SAMUEL GOMPERS:

(Page 1016.) Witness's attention was first called to "Go to —" in the Editorial in the October, 1907, Federationist, at the hearing before the Commissioner in the contempt proceedings. Thinks he was not present in November, 1907, when that expression was read and commented on by Mr. Beck before the Court. Was charged with using that expression in the petition in the former contempt proceedings. Answer that petition under oath. In the injunction proceedings respondents made no defense whatsoever.

Q. Did you file a sworn answer (in the contempt proceedings).

A. I would like to complete my answer.

Q. Very well.

Mr. PARKER: I would like to make an objection.

The WITNESS (interposing): When under oath before the examiner—

570 (Mr. Parker objects to any offer to introduce directly or indirectly the pleadings in the matter of the Buck's Stove and Range Company vs. Gompers, et al. on the ground, among other things, that it is between different parties; not proper cross examination, incompetent because of the prohibition contained in Section 860 of the Revised Statutes, and by reason of the inducements therein involuntary in its nature, and its admission here is in violation of the right of the defendant under the 5th amendment, not to be compelled to give evidence against himself. That it is an attempt, by indirection, to evade the prohibitions just mentioned of Section 860, and the 5th amendment to the Constitution.

The committee insisted, in the first place, that the objection urged was one which belonged, not to counsel, but to witness; that counsel might advise him of his right to find refuge in Section 850 and in the amendment, but the objection was his; and in the second place, that the question was whether he had not answered under oath the charge of contempt in using the language "Go to — with

your injunction;" and that he had not been asked a word about what his answer contained.

The COURT (page 1025): I do not think the question has presented either of the grounds upon which the objection is based.

Mr. PARKER: Then you rule now, and we except. Is that it?

The COURT: Yes.

Q. I now ask you, subject to your own objection, if you do not want to answer it, whether at any time prior to September, 1908, when you were on the witness stand, you made the explanation which you now give that the use of the dash instead of a comma was contrary to your wish?

Mr. PARKER: Do not answer until I object, Mr. Gompers. I now renew the objections just made, and on all the grounds specified.

571 The COURT: There is no legal obstacle in the way of the propriety of the question. If there is any privilege connected with answering it, that belongs to the witness.

Mr. PARKER: I except.

Mr. PARKER: I now advise the witness to interpose the same objection which I have just interposed.

The WITNESS: I would rather not.

Mr. PARKER: All right; the witness would rather answer.

The WITNESS: I would rather answer.

The witness thereupon testified that in every proceeding before that time, he undertook to have the essentials, involved in the suit, come before the Court, rather than to enter any defense and, therefore, in his sworn answer, did not defend or explain his position, explain how that heading happened to appear as it did, but at the first opportunity he had under oath to go into an explanation of any of the matters affected in this case, and the preceding cases. He explained it as he tried to explain it in his testimony this morning.

Cannot recall the circulation of the Federationist in October 1907. Approximately, eight, or nine, or ten thousand. Has not made an explanation in the Federationist, for the reason that he was endeavoring to contest the principles involved in all these proceedings. To him, the expression when he saw it, was regrettable, but he did not feel that it would aid the cause in which he was enlisted, to secure a decision from the courts, to make any explanation, or anything in connection with that case. Wanted to strip the entire case from any apparent sentiment or sentimentality. Wanted it to be determined upon the cold, bare facts—the cold, bare principles as involved in the case. As a matter of fact the words do not state "Go to hell." It is simply an inference which Mr. Darlington draws from it. Has seldom, in fact never, made explanations of

572 typographical errors in previous issues of the Federationist.

One of the decrees of the court in these cases I republished in the Federationist, including typographical errors as they originally appeared in the official document in the Law Reporter. Same type was used, he did not correct the typographical errors. Did not think it would have impaired the case in so far as the courts were

concerned, but there is such a thing as sentiment or public view which has its influence upon all people, judges of courts included, and he did not want to make any explanation of any incident, though as he says, it was a regrettable occurrence because of its inference which evil minds may draw from the appearance of the dash rather than a comma. There were other readers of the Federationist who were not in the ranks of the working people. For instance, the attorneys who were prosecuting himself and his associates. Did not, if he could help it, wish to give their evil minds something to feed upon.

Mitchell's name was not signed to the "Urgent Appeal." It was simply typewritten into it. It was taken as a matter of course. More than likely witness did it by reason of the general understanding. Mitchell did not know this had been done until after the "Urgent Appeal" had been published. Does not know what he did about it then. It was never corrected, or dissented from in the Federationist by his request, or so far as he knows.

(Mr. Parker says Mitchell never withdrew his signature, and will not find fault with anybody for having done that.)

573 In the years 1907, 1908 and 1909, witness was editor of the Federationist. Had some assistance by way of his own appointment. He was the sole responsible editor; it had no editor other than the President of the Federation. That is one of his duties as President. He has other duties. He is the only one who is editor. Witness thinks he caused the injunction itself to be published in the February Federationist, and that he did so that all might be governed by its terms—everybody interested and whom it affected. Did not have the facility of reaching all who might be affected, and published it in the Federationist, so that all who had the opportunity of reading it, and might be affected, might see it. In other words, to afford all organized labor and their friends the opportunity of knowing what they were not to do, and obeying the injunction. Published it so that all members of labor unions and their friends might understand what the injunction was—unquestionably that they might obey it in so far as its terms were not beyond the power of the Court to issue. Had not any means of conveying them any authority to determine that question. As one of the persons restrained in the order, acquainted himself with its contents and provisions. Knew that the Federation and the individual defendants, witness included, were by its terms restrained and enjoined until the final decree in the case, from conspiring, agreeing, or combining, in any manner, to restrain, obstruct, or destroy the business of the complainants, or to prevent the complainant from carrying on the same without interference from any of the defendants, and carried that out. Was enjoined from interfering, 574 in any manner, with the sale of the product of the complainant's factory, or business, and did refrain, if he ever did before interfere. Knew that he was restrained from distributing through the mails, or in any other manner, any copy of copies of the American Federationist, or any other printed or written news-

paper, magazine, circular, letter, or other document, or instruments whatsoever, which should contain, or in any manner, refer to the name of the Buck's Stove and Range Company, its business or its product in the "We Don't Patronize" or the "Unfair" list of the defendants, but these were the very things for which the defendants were contending—the right of free press and free speech, and the contention that no restraining order should in advance prohibit publication. Witness took that position and acted upon it. He obeyed the injunction. When a court issues an injunction denying the constitutionally guaranteed right, the constitutional right must be exercised by any self-respecting citizen. The very contention which they have made all through, and are making now, is that exercising the constitutional right does obey the injunction, that an injunction which is void does not necessarily require obedience to part of its terms. Where it interfered with a free exercise of free speech and free press, he stood upon his constitutional right and exercised them regardless of the injunction for the purpose of contending this cause in the courts and through the congressional and presidential campaign, and for the purpose of securing relief at the hands of Congress upon these very questions at issue. In stating in his direct examination that he obeyed this injunction, he meant that he obeyed the injunction in every particular, in so far as it was for the purpose of carrying on a boycott, or aiding or

575 abetting it. Understands, as he uses the word boycott, the suggestion or agreement of two or more persons to refrain from bestowing their patronage upon any individual, the exercise of the natural right of man to own himself, to own his labor power, and to own the wages that he receives, or the expenditure of that labor power, and for the expenditure of those wages, his own, in any manner that he may deem suitable to his own wishes which may not be in contravention with law. That is the boycott which witness and others did not do. Witness said he would not at any time buy a Buck Stove or Range, and did not know why any one else would; that there was no compulsion to buy. That was the right of anyone and everyone to determine for himself.

Mr. Darlington refers to the phrase in which witness suggested that they take up that matter and consider it in their organizations, and witness says that the phrase referred to was one of those phrases which, in extemporaneous speech, one finds difficult sometimes to find a word, or a few words to aptly close a sentence, and that was the phrase used, but he thinks he can truthfully say it was not done for any other purpose, or was there any other purpose in mind. Asked if that reproduction of that phrase in the Federationist, and its submission to the consideration of its thousands of readers was also extemporaneous, he answered that he did not see that statement until he saw it published in the Federationist, and did not furnish the copy for that speech. Was the editor and responsible for its utterances. Had some assistance, and part of the work, such as talks on labor, which frequently appeared in the columns of the Federationist, were taken by assistants, either from a newspaper, or furnished by someone whom he did not know, and that has

been evidently put in there, but he didn't see it until long after it was published.

576 Witness knew he and his organization were under injunction not to allow anything to appear in that paper that affected the business of the company. The assistants referred to were his employees and subject to his orders. He was a very active and busy man, and cannot give, much as he would like to, attention to all the affairs of the Federationist, and particularly its officers. Does not know what his assistants knew, simply knows that he requested them to avoid the violation, in any way, of the terms of the injunction of the Buck's Stove and Range Company issued by Justice Gould. Does not know whether they regarded that statement, or its incorporation in the Federationist as a violation of the terms of the injunction, and in any event, it was a question of free press, and if there was anything in the Federationist which was a violation of law, or libelous, proceedings could be had in accordance with law, for the publication.

Witness has testified that when he learned the bond had been given on December 23, 1907, he sent for all the employees of his organization there and told them not to circulate, or give out any copies of the Federationist, or any circular, or publication or document of any kind, containing any reference to the Buck's Stove and Range Company, without submitting it to him.

These assistants never dreamed, nor did he that the publication of a court decree, or an order of the court was a violation of an injunction. It never occurred to him until the contempt proceedings were begun. This remark refers to the production of his speeches during the political campaign.

Did not say that the Stove Company was unfair to labor after the January, 1908, issue. Knows that the editorial he has 577 referred to, discussed the injunction and all it involved; the denial of free speech and free press; and these two parts of the injunction were in violation of the Constitution of the United States, and he proposed to continue to discuss the subject either upon the platform, or through the columns of the Federationist, as a principle, but not for the purpose of carrying on a boycott, nor be in contempt of court. To the question whether he proposed to disobey an injunction without being in contempt of court, he answered that the court had issued an injunction, parts of which were void by reason of its interference with the constitutional guarantee of citizenship. He is an advocate and defender of the Constitution, believes in it, and wants to see the Constitution enforced. Regards the Supreme Court of the United States and the courts created by Congress as the tribunals vested with authority to decide legal questions.

(Page 1043.) The Constitution provides for Congress to create courts. The Supreme Court of the United States is the final arbiter of questions of law, and no question can be determined by it unless considered before the lower courts, hence the contention made by witness. It is not a proper inference to say that, upon his theory in disobeying the injunction in the particular mentioned, he was not bound by the orders, or decrees of any court, unless and until the

Supreme Court of the United States had acted upon it. Has always held that every order of the court, not in contravention of constitutional guarantees, must be obeyed, and endeavored to the fullest to follow that precept himself, and to inculcate it upon others. When a citizen is fully convinced an order of court has transcended its power—issued an order void and unconstitutional—and that conviction of the citizen is fortified by advice of counsel, that is the position to take. Has not acted upon the theory that he and his counsel are an intermediate court of appeals to set aside the judgments and decrees of courts until the Supreme Court has acted upon them, but simply when a contention is involved, to make this
 578 contention through all the courts, until it is reached by the highest court. Could not so effectively make such contention in regard to the constitutionality and validity of these injunction decrees without violating them until some other court had acted upon them.

(Page 1046.) Referring to the provision near the end of the injunction, restraining witness and co-defendants from, in any manner whatsoever, impeding, obstructing, interfering with, or restraining complainant's business, trade or commerce, witness understood the injunction so restrained him, and they did not interfere with the business in any way. (Mr. Darlington moves to strike out the later part of the answer as not responsive.)

Mr. Darlington calls the witness's attention to the following paragraph of the "Urgent Appeal" in the February, 1908, *Federationist*, page 112.

"The injunction invades the liberty of the press, the liberty of speech.

"It enjoins the American Federation of Labor, or its officers, from printing, writing or orally communicating the fact that the Buck's Stove & Range Company has assumed an attitude of hostility toward labor, and that organized labor has made this fact known and asks our friends to use their influence and purchasing power with a view of bringing about an adjustment of all matters in controversy between that company and organized labor."

Mr. Darlington asks if that was witness's understanding and construction of the injunction, and witness says, looking it over carefully, the word "asked" should have been, as the context indicates, "asked", and with this correction, his construction of the injunction was that as to its real purpose. It was to prevent a boycott which
 579 some of the labor organizations had declared upon the Stove Company, and the A. F. of L. had approved. He did not have in mind—rather it did not seem to him that the Court had the power to issue an injunction; that it was an excess of the power of the court to prohibit the publication of ordinary news. The language quoted represents witness's then construction of what the court intended, except as to the word "asked" for "asks".

Mr. Darlington refers to the December, 1909, *Federationist*, page 1061, Witness' Report to the Toronto Convention reading as follows:

"The injunction prohibited the publication of the company's

name upon the "We don't patronize" list of the A. F. of L., directly or indirectly, and all were forbidden to state, declare, or say that there existed or had been any dispute or difference of any kind between the company, the A. F. of L., or any of its affiliated organizations, in any manner whatsoever."

Mr. Darlington asks if that represents his understanding of the injunction, to which witness replied that that was a sentence taken from an entire report of the subject, and when taken alone cannot be intelligently understood—cannot be so understood except in connection with the whole of the matter in which the subject is discussed. The statement was true, in part, of the injunction as witness understood it. And being asked to read from the report anything that qualified it, if there was anything, the witness answered that the entire matter should be considered in connection with it, as tending to show, or as showing the status of the entire case as witness then understood it.

Does not know who printed the proceedings of the Norfolk Convention for the A. F. of L. That comes under the duties of the Secretary, which he does without directions from witness. After they were printed witness signed, or countersigned the warrant for authority of the payment after the payment was made. Had no other connection with paying for the binding of these 580 volumes, except as he has described in the answer to the printed proceedings.

(Page 1051) Cannot tell how the bound or unbound proceedings were sent out. Witness countersigned a warrant for the payment of the postage after the postage had been purchased, and the money paid. Did not make a deposit with the Post office Department for payment of the postage, before the copies were delivered to it, or know anything about that arrangement.

Cannot tell how many copies of the Norfolk proceedings were printed or approximate number. The A. F. of L., or its officers presented copies to the President and Vice-President of the United States, Department of Commerce and Labor, Chairman of House Committee on Labor, Chairman Senate Committee on Education and Labor, Library of Congress, British Trade Union Congress, and a few other men or institutions of such character.

Other than the admonition to the employees in the office of the A. F. of L., took no steps to prevent distribution of the printed proceedings of the Norfolk Convention after the bond had been filed making the injunction operative. Took steps, to the best of his ability, to see that the orders were obeyed. The printed official proceedings of the annual convention were not regarded by witness at all as being involved in the injunction. Took no steps to prevent delivery of the copy of the proceedings to the Congressional Library on January 28, 1908. Had not in mind the possibility of such a strained construction of the injunction, that a copy of the printed official proceedings of a convention, covering hundreds of different subjects, could be held to be in violation of the terms of the injunction. Is sure he did not have that in mind. Never occurred to him, in the remotest way, that that could be held

to be in violation of the terms of the injunction. As he stated while ago, his understanding was the injunction was issued to secure relief to the Stove Company from a boycott and alleged boycott.

(Page 1054.) Mr. Darlington thereupon asked the witness if he did not know that the following, from his report, was printed in the printed copy of the Norfolk proceedings:

"A contest ensued and the organization in question declared the Buck's Stove & Range Company of St. Louis unfair. It appealed to all organized labor and its friends to transfer their patronage to other and fairer employers. A similar appeal was made to the American Federation of Labor, and, pursuing the usual course followed in cases of appeals of this character, I caused an investigation to be made and made further investigation myself, and had a representative of our Federation endeavor to bring about an honorable adjustment of the controversy between the organization primarily in interest and the company. * * *

"The investigation demonstrated clearly Mr. Van Cleave's hostile purpose toward the organization in question, and every effort at an amicable adjustment was fruitless. It was then that my colleagues and myself, the Executive Council, approved the position and action of the organization affected, and this fact was published in the American Federationist. The suit is brought to prevent this publication."

Witness responds that in connection with the discussion of all the principles involved, this is a concrete statement which he made to the convention of the history and status of these cases, and during the course of that report, he made the statement, and now sees it was contained in the proceedings of the Norfolk Convention as printed.

Mr. Darlington called witness's attention to the following, from the same report:

"The attempt to enjoin or prevent the publication of the 'We Don't Patronize' list of the American Federation of Labor, whether by injunctive process or other judicial or legislative means, would be in direct violation of the constitutional guarantee and would indeed abridge free speech and a free press. In all the land there is neither law nor power to enforce such a decree."

Witness says that he knew that was in the printed proceedings, and he, voluntarily however, discontinued the name of the publication of the Company upon the "We Don't Patronize" list. Knew it was in excess of the power of the court to prohibit himself and his co-defendants from publishing in the Federationist, or any where else, any reference to the fact that the Buck's Stove and Range Company had been on the "We Don't Patronize" list, or had had any controversy with his labor organizations. Knew, as a matter of fact, that the court had undertaken to enjoin him in that respect.

Mr. Darlington called attention to the following extract from "Treasurer Lennon's Report, Norfolk Convention:

"The Buck's Stove is not calculated to warm the cockles of the heart of any trade unionist, no, nor of any man or woman that stands for a square deal. I do not mean a square deal in name only,

but I mean a square deal as the carrying out of the Golden Rule in our industrial life. We propose to keep warm without the use of any Buck's stoves, injunctions to the contrary notwithstanding."

Mr. Darlington asks witness if he knew that was in this printed copy, to which question Mr. Parker objects as not an utterance, and not pretending to be an utterance of Mr. Gompers, nor a part of his report, and not charged against him in the specifications alleged in the contempt.

Mr. DARLINGTON: It is charged that he circulated these Norfolk proceedings containing references affecting the business of the Buck's Stove and Range Company, in violation of the injunction.

The COURT: The purpose which actuated the mind of one charged with contempt of court is always relevant. As reflecting upon the question whether, if there was, as a matter of fact, a violation of the order, it was done with a wilful intention of violation, it is entirely relevant to show violations other than those specifically charged in the charges. The objection is overruled.

Mr. PARKER: We except.

Witness says he did not know, or have in mind any of the matter referred to, as contained in the Treasurer's report. Mr. Lennon is Treasurer of the A. F. of L. and is required to read a report of the income and expenditures of the year preceding, and does so, and other matters, than his financial report, contained therein, did not occur to witness at all. Knew Treasurer's report was in this printed copy, but had no knowledge of the part of that report other than the financial affairs. Did not know the part quoted was in it.

Witness appointed at that convention, a committee on resolutions. Witness's attention is called to the following:

"The Committee recommended the adoption of Resolution No. 49 when amended to read as follows:

"Resolution No. 49—by Delegates A. B. Grout, James J. Dardis, of the Metal Polishers, Buffers, Platers, etc.:

"Whereas, the Buck's Stove and Range Company of St. Louis, Missouri, of which Mr. J. W. Van Cleave is President, has attempted to disrupt the metal polishers, buffers, platers, brass-molders, brass and silver molders' union of North America, and in pursuance of said object has arbitrarily abolished the nine-hour work day, which has existed in factory for over 18 months, and instituted a ten hour work day. * * *

"Resolved that each central body affiliated with the A. F. of L. be and is hereby requested to appoint a committee who shall conduct and manage a "campaign of education" among the membership affiliated with their central body, as well as dealers in stoves and ranges in their locality, and thoroughly inform them of the entire facts of the dispute between the metal polishers, buffers, platers, brass and silver workers union of North America, the Brotherhood of Foundry Employees, also as to the attitude of J. W. Van Cleave and the Manufacturers' Association towards organized labor. Be it further

"Resolved that the said committee shall report on the first of each month to the officers of the A. F. of L. the progress of the campaign of education, together with a complete list of all dealers

in their locality who are handling and selling the product of the Buck's Stove & Range Company. Be it further

"Resolved that all commissioned organizers of the A. F. of L. shall report on the first of each month to the officers of the A. F. of L. the progress made in this campaign of education by the different committees of the different central bodies in their respective districts, and also render such aid to all committees as lay in their power."

Witness knew that this report of the special committee appointed by him on resolutions, was in the printed copy of the Norfolk proceedings, but in no way connected it with the injunction, or the terms of the injunction, or thought it would be in violation of the terms of the injunction, or connected it with the boycott. It was in connection with the boycott until December 23, 1907. This resolution was adopted before and was part of the official proceedings of the Convention, numbering 357 pages, and in no way connected with the injunction of Justice Gould, and the preambles and resolutions were considered and adopted before the injunction was issued.

Does not know and cannot say if these printed copies were received by witness before or after the injunction bond was given, and the injunction had become operative. Expected the usual course to be taken in their distribution, which was that the libraries on our free list would be furnished with them, the Department of Commerce and Labor, President of the United States, one to each delegate to the convention, and to those who wished to buy them 585 at \$.25 a copy. There were about 312 delegates. Copies were also sent to each affiliated international union for the archives of their offices, about 118, and probably where there was an official journal connected with the international union, one for the official publication of the organization or its library. Does not know if one was to be sent also to each of the organizers. There were at that time approximately seven or eight hundred organizers; maybe more; perhaps twelve hundred. Knows that they increased their number of organizers by fully a third since that time. Can neither deny nor affirm that these copies of the printed proceedings, numbering two thousand, were sent out by the A. F. of L. after December 23, 1907, or more than a week after the injunction became operative.

No action was taken, that he recalls by the executive committee regarding Resolution 49. The injunction became operative December 23, 1907, within six weeks of the time of the close of the convention. Executive Committee issued a circular to all organized labor and friends under date of November 25, 1907, pursuant to that resolution.

(Page 103L.) Did nothing on that resolution after December 23rd. Witness's report to executive council on resolution 49, was:

"In conformity with the provisions of this Resolution 49, circular was issued on November 26th to all affiliated organizations in regard to the suit brought by Mr. Van Cleave for the Buck's Stove & Range Company against the American Federation of Labor, its

Executive Council and others. The Executive Council has been kept advised from time to time what steps have been taken in this matter.

"With your consent, I have retained Alton B. Parker as senior counsel to act with Messrs. Ralstons & Siddons in the defense of labor rights in this case. Our position and attitude in the case are fully set forth in an editorial which I have written and which, 586 will be published in the February issue of the American Federationist, and which I shall lay before you before adjournment.

"In accordance with the action of the convention and your directions, the levy of one cent per member was made upon all affiliated organizations for the legal defense. To January 18, we have received \$10,972.55. The greater part of this fund has already been expended in retainers for attorneys, legal fees, expenses, printing, expert stenographers and so forth and so forth.

"I have issued a circular appeal for voluntary financial contributions for the legal defense in this case which all regard as one of the highest moment, not only to our fellow workers and our movement, but in retaining the rights of free speech and free press for all our people. The entire matter should receive your further consideration at this session."

When he said in part and in his report to the executive council that its members had been advised from time to time of the steps taken in this matter, witness had in mind the several matters which he condensed and enumerated in the report, and has just read. It had reference to resolution 49 and the issuance of the circular of November 26th.

Took pages of one copy of the January issue of the Federationist, containing the "We Don't Patronize" list and struck through the name of the Buck's Stove and Range Company. That was the copy for the printer for the next issue of the Federationist. Witness has said that the boycott ended then and there, on December 23, 1907, in so far as the A. F. of L. and its officers were concerned. From that time on witness only referred, in speech or publication, to the fact that the Company had been on the "Unfair" or "We Don't Patronize" list of the Federation of Labor, as a typical case of our 587 general complaint, but not for the purpose of carrying on, aiding or conducting a boycott. The name of the company did not thereafter appear on the "We Don't Patronize" list. The boycott ended, so far as the A. F. of L. and its officers were concerned on December 23, 1907. By boycott witness means the publication of the name of the Company on the "We Don't Patronize" list, or upon an "Unfair" list, or in any way used for the purpose of carrying on a boycott or influencing or inducing. A boycott, as he understands it, is the withholding of patronage. After the January number there was nothing spoken or published by witness in the direction of withholding patronage, so far as the boycott was concerned. There was no formal agreement or understanding, and there were no appeals made by witness through the Federationist, or through public addresses which he made, to let the goods alone.

Witness is asked "You have also said in your testimony that neither the American Federation of Labor nor its officers at any time

endeavored to coerce people into not buying or not patronizing the Buck's Stove & Range Company product; have you not?"

MR. PARKER: I object.

THE COURT: The objection is overruled.

MR. PARKER: We except.

THE WITNESS: I have.

Has no knowledge of a resolution introduced at the United Mine Workers' convention in January, 1908, entertained by John Mitchell, put to a vote by him, and announced to have been carried, providing that anyone a member of that organization buying a Buck's stove should be fined. In addition, the United Mine Workers of America is as much an independent body in its legislation and independent from the American Federation of Labor, as is a state legislature, in adopting a resolution or enacting a law, in its relation to the United States. John Mitchell is an officer of the A. F. of L., and was in January, 1908. The following is read to witness from February, 1909, Federationist, pages 142 and 143, as an editorial purporting to be by himself, John Mitchell and Frank Morrison:

"Mr. Mitchell is charged with and admits having presided at a convention of the United Mine Workers of America at which a resolution was adopted declaring as 'unfair' the products of the Buck's Stove & Range Company. It was Mr. Mitchell's duty as President of the miners' organization to preside over this convention. He had no knowledge that a resolution upon the subject was to be considered, and when it came before the convention he was so little impressed with its significance that he did not even remember the subject of the resolution until the contempt proceedings were instituted. However, even though he was conscious of the full import of the resolution referred to, he committed no offense against the law by retaining his position as presiding officer of the convention when the resolution was adopted. He had, of course, three alternatives, none of which a self-respecting man could have availed himself. He could have resigned his position as President of the United Mine Workers of America, or he could have called some other member to take the chair, thus shirking his own responsibility by placing it upon the shoulders of another, or he could have become the advocate and defender of the Buck's Stove & Range Company, and opposed the passage of the resolution. The injunction did not require Mr. Mitchell to advocate the cause of this concern; he was not commanded to defend its attitude in the controversy with its employees; but it seems that his failure to do so constituted an offense against the Court, for which he is sentenced to prison."

Witness united with Mitchell in issuing that editorial. The declaration as to his course in entertaining a resolution to fine a man for buying a Buck's stove, putting it to the body over which he presided, taking the vote, and declaring it adopted, was the only course that a self-respecting man could have availed himself of, is a statement of fact.

Being asked whether in this editorial he did not promulgate to his 9,000 readers the fact that he endorsed and approved Mitchell's

589 action in putting that motion and declaring it carried, the witness answered that in reviewing the decision and opinion there was no knowledge on witness's part, and he believes on the part of his associates who joined him in the preparation of that article, that it was in violation of the terms of the injunction, and in any event it was a discussion of a question which the whole country, and whole world were discussing. Other magazines and nearly all the newspapers of the country were discussing it and expressing their views, and he did not believe, and does not now believe, that he was denied the right of expressing his opinion, or his associates their opinion, to discuss their opinion through the press. Did have knowledge of the resolution passed by the United Mine Workers of America. We have not in this an instance in which the Vice-President of the A. F. of L. participated in a coercive measure, namely, a fine against a purchase, and the President of the A. F. of L. publicly endorsed and expressed his approval of his course. The question was of his presiding at the convention and putting the resolution, not as to the nature of the resolution, or, as he has said, its coercive character. Knew the resolution was one imposing a fine upon any man buying a Buck's stove.

Published the petition of the Company for an order against these respondents, to show cause why they should not be punished for contempt of the court's injunction of December 18, 1907. In the petition is quoted this Mine Workers' resolution, and witness quoted the full petition including the resolution. Witness published it as stated, and knew its contents, and what the resolution was. Mr. Darlington offers the resolution in evidence as follows:

590 "Whereas the Buck's Stove & Range Company of St. Louis, Missouri have taken legal steps to prevent organized labor in general, and the officers and executive committee of the A. F. of L. in particular from advertising the above named firm as being on the unfair or we don't patronize list, and

"Whereas, by the issue of such an injunction or restraining order as prayed for by the above named firm, organized labor will be deprived of one of its most effective weapons, and

"Whereas, J. W. Van Cleave, the president of the above named firm, also president of the National Manufacturers' Association, stated that in a few years' time he would *smash* organized labor; therefore, be it

"Resolved, that the U. M. W. of A., in nineteenth annual convention assembled, place the Buck's stoves and ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above make be fined five dollars, and failing to pay same be expelled from the organization."

There was no connection in witness's mind between the publication of the charges which he was called on to answer, in the Federationist, and the Buck's Stove & Range Company as having been upon the "We Don't Patronize" list, as having been a boycott. These articles conveyed to the world knowledge of the petition of the Buck's Stove & Range Company, and he published it for the news. Did not know that he was thereby circulating and bringing freshly to his

readers' minds the facts which he had been enjoined by the injunction from publishing. Did not know that the publication of these charges in the Federationist, was in violation of what he had told his employees not to do, namely, publishing or inserting in the Federationist, anything which bore the name of the Company, or had any reference to it. It seemed to the witness he had a right to publish an order of court, whether it affected him, or anyone else. The publication of this petition of the Company was for the news it contained in the history of the case which they proposed to contest before the courts. Did not regard it as a violation of the injunction. The publication was not for the purpose of a boycott, or in furtherance of a boycott, and as a matter of news, it was the exercise of the right of free press, and he published the petition not because of the resolution which it contained, but because of the petition in its general terms.

(Page 1079.) Would not have dared to have said that the expression "Go to ——— with your injunctions," in charge 13, Federationist, September, 1908, page 680, was a clerical or typographical mistake. It was the publication in the Federationist of an exact copy of the petition of the company in which the petitioners made the charge that he published this term, and he could not and would not have dared to correct it, because that would have been a misrepresentation of the charge. Did not accompany the republication with an explanation or a statement upon the editorial page that it was a mistake and unintended; because did not want, in any way, to do anything to detract from the issues, or contentions in the case, and in so far as it appears there in the publication of the petition in full, it did not occur to him that it required any explanation at that time, but the first opportunity he did have, when placed upon the stand upon cross-examination, he made the explanation to the examiner which he has made substantially this morning. As to how many of the 9,000 people who saw the article as published, witness said that the explanation reached, his examination was a public hearing as this is a public hearing. The 9,000 readers resided in several states and territories. There have been newspaper correspondents here, and they generally attend to that part of it, so as a matter of fact, the explanation would reach millions, when the original publication of this caption of the article would simply reach a few thousand, and in all likelihood not draw the same inference which Mr. Darlington has drawn from it. When he republished, as in charge 12, in the September, 1908, Federationist, the following: "Do not fail to keep the Buck's Stove and Range Company of St. Louis in mind and remember that it is on the unfair list of organized labor of America," didn't have in mind, at all, its repetition to his followers. In publishing the petition in full, it was his intention that all who were interested might know that that petition was presented to the court, and in the sequence of events in the case which they proposed to test.

Witness's attention is called to the following in charge 14, published in the September, 1908, Federationist:

"You cannot be prohibited from informing your friends and sym-

pathizers of the reason why you exercise this right. You have also the right to inform business men handling the Buck's Stove & Range Company's products of its unfair attitude towards its employees and ask them to give their sympathy and aid in influencing the Buck's Stove & Range Company to deal fairly with its employees and come to an honorable agreement with the union primarily at interest.

"It would be well for you, as central bodies, local unions and individual members of organized labor and sympathizers to call on business men in your respective localities, urge their sympathetic cooperation, and ask them to write to the Buck's Stove & Range Company of St. Louis, urging it to make an honorable adjustment of its relations with organized labor.

"Act energetically and at once. Report the result of your effort to the undersigned."

"SAMUEL GOMPERS,

"President American Federation of Labor."

"FRANK MORRISON, *Secretary.*"

Witness says that this was not only not a most effective, 593 but not an effective means, and was not any means at all to again circulate these instructions or to carry on a boycott. On the contrary it was the publication of a piece of news and an important piece of news in the progress of this case. This publication was not a means or an effective means of exciting the continuance of a boycott, and was not so employed or intended.

(Page 1083.) Witness is shown the urgent appeal circular, Exhibit A. H. No. 2 in the old case, and reintroduced here, and says he does not know how many copies were circulated, but a very large number. Very likely countersigned a check to pay for 2600 of them. Witness has read the third sentence in it referring to the injunction, reading as follows:

"It enjoins the American Federation of Labor, or its officers, from printing, writing, or orally communicating the fact that the Buck's Stove & Range Company has assumed an attitude of hostility toward labor."

and is asked what he meant by "assuming an attitude of hostility toward labor," and says that it had violated the practice of the nine hour work day in the polishing department of its establishment, and arbitrarily introduced the ten hour work day, causing a protest of the workmen and a strike and the discrimination of the company then against workmen because they were members of a labor organization, and their discharge and the refusal to employ workmen who were members of a labor organization, and instructions given to one of the foremen of the department, so sworn to by him, that the union workmen were to be laid off, or non-employed.

Mr. Parker states that the records of the Federation show 25,000 copies of the urgent appeal.

Witness states that the Buck's Stove and Range Company had assumed an attitude of hostility toward labor and antagonistic 594 to labor. Witness thinks there is a considerable difference between people who antagonize another and those who are un-

fair to another. There is a fair antagonist and an unfair antagonist. The Buck's Stove and Range Company had discharged men because they belonged to unions, long before, and they were doing it yet. That is part of what he refers to in the circular as an attitude of hostility toward labor. He would classify it now as unfair. In the literature which his organization has adopted the word unfair means substantially that.

In saying, in the next sentence, "organized labor has made this fact known," witness refers to the fact that it had made that fact known in the past by the publication of the name in the "We Don't Patronize" list. That is not the equivalent of a direction to boycott. It was simply a notice to the readers that the following is a list of names whom we do not patronize. They did not come in notices of a boycott, as Mr. Darlington interprets it. In so far as the A. F. of L. was concerned, they had not strictly what might be termed a boycott.

Many years ago the A. F. of L. was in the habit of boycotting individuals or firms, and in this way giving notice of it, but in the past several years no such course was pursued. Some years ago the A. F. of L. decided that no application to approve the consideration of any firm as unfair toward labor by the convention would be passed on, but the matter would be referred to the executive council of the A. F. of L., for investigation as to the cause of complaint, and to make an effort to adjust the dispute between employer and employee. Failing in that, and due to the unfair hostility of the employer, a notice was published, or submitted to the executive council for approval by its members, and notice was published substantially something like this:

"To all organized labor: An effort having been made by the executive council to adjust the controversy between this company (mentioning it) and the union involved (mentioning it) without success, and after investigation, the application of the organization to regard this firm as unfair has been approved by the executive council."

The A. F. of L. maintained boycotts in the earlier years, but not in 1907. There is a difference between boycott, which is an agreement of two or more persons not to bestow patronage, and a statement of fact that the following named firms we do not patronize. Had no boycotts for several years prior to 1907. Had a committee in the conventions which was called the Committee on Boycotts, for the consideration of the differences between employers and employed, but in the strict sense of the term there was no boycott conducted by the A. F. of L. Cannot tell how long prior to 1907 the A. F. of L. ceased to boycott. Would be glad to tell. Knows that some years ago, or many years ago, there were boycotts conducted by the A. F. of L. Thinks it was before 1905. Appointed a Committee on Boycotts at the 1907 Convention. Received a report from that Committee, embodied in the printed proceedings. It is substantially true that they appointed a Committee on Boycotts, received reports from it, and published that report, and yet had no boycotts. One difference between boycotts as they had then, and

the publication of the name of a firm or manufacturer on the "We Don't Patronize" list was the difference between irresponsible, inconsiderate action, and for the purpose of bringing about an honorable adjustment between employees and employers, by persuasion to withhold patronage. There may be very little difference between this and a boycott in witness' construction of this term—substantially the same thing in effect. On the construction Mr. Darlington gives it, from which witness will not differ, when witness said in the urgent appeal circular that organized labor had "made this fact known," he referred to the fact that the organization had practically boycotted the Buck's Stove and Range Company.

(Page 1091.) Sent out 25,000 of these circulars one month after the injunction became operative, as an appeal for funds.

Q. No matter what the object was, you did the thing. You knew the injunction had prohibited. A. It was the exercise of free speech, and the order, in so far as it forbade the exercise of free speech, was in excess of its powers. * * * It was a question of right to which witness was entitled as a citizen under the Constitution of the United States.

Witness himself gave notice to 25,000 persons that organized labor had asked its friends to withhold their patronage from the company, to bring about an adjustment of the controversy. Did not think it was a violation of the injunction, because the injunction was void in so far as it forbade the exercise of freedom of press and freedom of speech. In saying that witness obeyed it, he means that he obeyed all except the void parts, or the parts which he held to be *held to be void*. Cannot recall that there is any difference between the editorial in the February, 1908, Federationist, entitled "Free Speech, etc.," and Exhibit A. H. No. 3 in the former case, and reintroduced here.

Witness's attention is called to a report of a Committee to the 1905 Convention, printed on page 200 of the proceedings, as follows:

"We must recognize the fact that a boycott means war, and to successfully carry on a war we must adopt the tactics that history has shown are most successful in war. The greatest master of war said that 'war was the trade of a barbarian, and the secret of success was to concentrate all your forces upon the enemy, the weakest, is possible.' In view of these facts, the committee recommends that the State Federations and the central bodies lay aside minor grievances and concentrate their efforts and energies upon the least number of unfair parties or places in their jurisdictions. One would be preferable. If every available means at the command of the State federations and central bodies were concentrated upon one such, and kept up until successful, the next on the list would be more easily brought to terms, and within a reasonable time none opposed to fair wages, conditions or hours, but would be brought to see the error of their ways and submit to the inevitable.

"Which motion, the proceedings further referred to, say was seconded and adopted."

Witness states that that was adopted by the Convention. Witness, in answering, on pag- 824 and 825 of the record, that he had been advised that the editorial was not a violation of the terms of the injunction within the powers—within the rights, undertook when he gave that answer to immediately correct it, but was prevented by Mr. Darlington. His answer should have been that it was a violation of the terms of the injunction, and that he had a perfect right to publish the editorial and issue it as well as the urgent appeal. As he intended to make it, and as he now wants to make it—that it was not a violation of the terms of the injunction; that he had a perfect right to publish the editorial and issue it, as well as the urgent appeal. The question- of the powers or the rights were expressions which he did not give consideration, and did not intend to say, and tried immediately to correct. It had no reference to any conversation he had with his attorneys. So far as the powers and rights are concerned, they were not the questions they discussed with him, or advised.

Q. Then you were not advised by any attorneys—I am not calling for any names—that this injunction was in excess of the rights and powers of the court, and therefore was not binding on you? A. I was so advised.

598 Q. You were so advised? A. Yes, sir; it was not only my opinion, but I was so advised.

(Page 1097.) The entire appeal was submitted to his attorney as it appears in print. He was advised that the circular in its entirety, containing this appeal that organized labor was asking its friends to use their influence and purchasing power with a view of bringing about an adjustment, could be issued. The advice was given from the same counsel who told him that the injunction was in excess of his constitutional rights, as being in violation of the constitutional guarantee of free press and free speech, and was given in connection with the same, and in all other matters. It was given in connection with the advice that he could publish the urgent appeal. Their attorneys had been acting for them in labor cases for quite a number of years, and they were discussing the very principles involved in this cause in the original cause, and helping to prepare bills. They advised that the right of free speech, as guaranteed by the Constitution, had been definitely settled by the courts, by the Constitution, and by the case in the Supreme Court in the State of Missouri, and that an injunction could not restrain by previous prohibition the publication of any matter; that the publisher or writer might be held responsible for his utterances, both civilly and criminally. The editorial and urgent appeal were submitted, and the respondents were advised that it was the exercise of free press and free speech; that they had the right to issue them, and did so, simply responsible to respond in case of damage, or if an indictment *was* brought—if anything that they wrote or published or said was criminally or civilly libelous.

599 Witness's attention is called to the following:

"In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove & Range Com-

pany declares that punishment for violation of the injunction issued by Justice Gould, against the American Federation of Labor, applies particularly to those within the territorial limits of the District of Columbia, who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation of Labor assure us that this construction of the Court's order is inaccurate."

Witness states that this paragraph was put there as a filler, not for the purpose of raising funds for the defense—a piece of news and filler. The urgent appeal and editorial reprint were not circulated for the purpose of disseminating news. Were circulated in an effort to raise money for the defense and to give to all whom they could reach, the facts in the case, so that their interests would be aroused and they would contribute. There was no purpose in giving these 25,000 people notice that they could not be punished for violating the injunction if they did not come to the District of Columbia. It was put there as a filler to fill it with some matter of news which witness published or caused to be published.

Does not know which official organ of the National Association of Manufacturers was referred to in the note. Witness wrote the note. Thinks that opinion of counsel, referred to, is contained in copy of American Industries of January 1, 1908, marked in this proceeding as Exhibit Kirby No. 1, and contained on page 8. Was not aware

when he wrote and published this note previous to giving the
600 statement of counsel for the Company, that it was not a fair, but misleading statement of that opinion. Did not think that the opinion of Mr. Davenport, just referred to, advised all persons wherever they might be, that although they could not be punished by the Supreme Court of the District of Columbia if they violated the injunction, they were liable to punishment by the federal courts for such violation. Does not know how he happened not to say that. Thinks that the opinion, containing the following:

"It is important also for every person interested to know that it is a criminal offense under the statutes of the United States, punishable by imprisonment in the penitentiary for not more than three years, for any two or more persons anywhere in the United States, to conspire together to evade or defeat this decree by doing any of the acts prohibited by it, and they are liable to prosecution therefor by the federal authorities. It is within the power, and will be the duty of the federal authorities to protect the dignity of the Supreme Court of the District of Columbia against all attempts to defeat the course of justice in that court by the doing by anybody in any place, of the acts prohibited by said decree".

ought to be read in its entirety, and that then there will be a better understanding of it. Thinks that the part so read did not escape his attention at the time he wrote and published that note. Does not know that that statement is not a fair construction of Mr. Daven-

port's statement as published in the American Industries. Thinks that that part which gave notice that persons violating the decree could be punished elsewhere, even though they could not be punished here for violating the provisions of the injunction, is not wholly expressed in his summary of the opinion. His summary is not a consideration of the entire argument, but is a statement of a portion of it, which is intended to be a fair construction of the statement of Mr. Davenport. At the time he thought it was.

601 There was no intention on his part to evade that part of the opinion which gave notice that they were liable to prosecution wherever they violated the injunction. Cannot account for it.

Q. You are a man of intelligence and very considerable experience in writing and editing, are you not? A. Yes, sir; a fair experience.

Q. Is there any possible explanation of it, consistent with any other theory, than that the note was intended to convey to your readers that they would not be liable for violating the decree of injunction? A. Yes, sir; there was.

Q. In justice to you I would like to have you state it.

To which the witness answered that he wrote the best he knew as to what he believed to be the opinion of Mr. Davenport. He preferred not to use his language. Preferred to use his own language, rather than Mr. Davenport's in any publication of which he had direction. Has no explanation to give for omitting half of it. It was his best understanding of it at the time.

Q. How was it possible for you to believe that you expressed his opinion when you omitted over half of it, and the very point of the opinion that this injunction had to be obeyed by the people all through the United States, or else they would be liable to punishment? A. I have no explanation to give. It was my best understanding of it at the time.

602 Cross-examination of SAMUEL GOMPERS (continued):

FEBRUARY 8, 1912.

(Page 1109.) Recognizes volume shown him as containing copy of his report to the 29th Annual Convention of the A. F. of L., held at Toronto, published in the December, 1909, Federationist. The report was not extemporaneous.

Witness's attention is called to the following extract from page 1602 of the Federationist:

"What are the offenses for which Mitchell, Morrison and I are sentenced to long months of imprisonment, and the ignominy of being classified as criminals? We have dared to defend our constitutional rights as men and as citizens, despite the injunction of a court which sought to invade the rights of free speech and free press secured to the Anglo-Saxon people centuries ago by Magna Charta and clinched by the adoption of the first amendment to the Constitution of the United States."

The expression therein contained, "We have dared to defend our constitutional rights as men and as citizens, despite the injunction of the court," meant nothing more than its plain language implies. Respondents had asserted their right to the exercise of free speech

and free press by discussing the principles involved in this cause, and in all of the causes. Witness had discussed time and again in other cases, editorially through the columns of the Federationist, and through other magazines for which he had been invited to write, and upon the platform. He discussed the very principles involved in the contention as contained in the injunction issued by Justice Gould. When the first knowledge came to them that the principles for which they were contending, were contained in the case, they gladly met the issue by making that a test case. The injunction did not forbid them making a test case, and they made it.

603 Did not have to do anything despite the injunction, in order to make a test of it. Despite might not be the best word expressive of what was in his mind, but it was that the injunction forbade the exercise of freedom of speech and freedom of press, and that he proposed to exercise that right. To the question whether he proposed to exercise the right notwithstanding the prohibition in the injunction, he answered that if the injunction forbade the exercise of the right of free press, he proposed to exercise that right and take the consequences, whatever they may be. Cannot tell to what the paragraph referred to, when it says "despite the injunction of the court. This is taken from the text of his report on that subject, and is not intelligent to any one unless it is taken and read as a whole, together with the other parts of that report bearing upon the subject. Was making reference to the injunction of Justice Gould in the Buck's Stove case. He contended that they had the right to exercise the right of free press and free speech, and that no restraining order of a court could in advance restrain the expression of free speech and free press. To the question whether he meant by that paragraph that he in continuing to do the thing which the injunction forbade him to do because he regarded it as an invasion of his right of free speech and free press, he answered that he had answered the question as best he knew how and that he had no desire to place any construction, either one way or the other upon the paragraph last quoted.

Gladly welcomed this suit because it presented an opportunity to take the case to the Supreme Court of the United States. To the question why, then, they did not proceed with that test case, without the coercive measures adopted at the Norfolk Convention, he

604 answered that they had a dispute with the Company. The resolution referred to in the Norfolk proceedings, relative to sub-unions visiting tradesmen and asking them not to deal in the Company's product, and making a report every month, and requiring the organizers to follow up in some way and report how the campaign of education was progressing, was introduced by a delegate to the convention over whose course in that matter he had absolutely no power or influence, and did not know in advance what resolution he intended to introduce, and he would not influence a

605 delegate to introduce or withhold the introduction of a resolution in the convention. He did not know in advance of this resolution, before its introduction, and its reference to a committee was a mere matter of form. The report upon that reso-

lution and its adoption by the convention was all in advance of the injunction of Justice Gould, and was never carried out after the injunction went into effect. The campaign of education was conducted politically after the injunction of Justice Gould became operative, other than the warning to the employees, of the A. F. of L., witness took no steps to prevent the circulation of the proceedings of the Norfolk Convention. Had not in mind that the printed official proceedings of the convention could have been included or was included in the terms of the injunction. The printed official proceedings was the official printed record of the A. F. of L., and as to whether one printed proceedings of the proceedings of one convention was included in the injunction, never occurred to him.

The Buck's Stove and Range case was judicially before the courts, and if necessary to take it up to the Supreme Court of the United States, and simultaneously upon the political field, in order to secure legislative relief from the hands of Congress.

There was no time for the campaign of education of having the dealers canvassed by witness's followers against patronizing the Buck's Stove and Range Company, other than a circular which witness issued when the injunction was issued and became operative. The time intervening between the close of the convention and the passing of the order of the court by Justice Gould, was too brief for anything to be done in the way of conducting any sort of a campaign, and whatever campaign, if any, was conducted, ceased immediately upon the order of the court becoming effective. Witness had no control over campaign of education outlined by the Norfolk Convention. The campaign for the purpose of carrying on a contest with the Buck's Stove and Range Company was before the order became effective. It never occurred to the witness that the dissemination of the printed Norfolk proceedings would be a violation of the injunction.

Thereupon, the following from the American Federationist for November, 1908, page 1001, being extract from witness's report to the executive council, dated September 9, 1908, was read to the witness and identified by him as his language:

"Your attention is especially called to a feature of the case of this injunction. If all the provisions of the injunction are to be fully carried out, we shall not only be prohibited from giving or selling a copy of the proceedings of the Norfolk Convention of the A. F. of L., either a bound or unbound copy; or any copy of the American Federationist for the greater part of 1907, and part of 1908, either bound or unbound, but we, as an E. C. will not be permitted to make a report upon this subject to the Denver Convention."

The full import of the provisions of the injunction came to witness a considerable time after the first reading of its terms, and he incorporated in his report to the executive council, about ten months after the issuance of the injunction, what his broader or better understanding of the injunction was. This was after the contempt proceedings had been taken.

Witness is handed the December Federationist for 1908, page 1072, being his report to the Denver Convention, and recognizes

as his the language—the above quotation the November, 1908, Federationist, and says that he desires to say that it is a part of his entire report to the Convention of the A. F. of L. of November, 1908. That language was used for the purpose of avoiding a *a* restatement of it; that it was in giving a chronological history of the case, and the report was printed in the December issue the same as was the custom for years before, in the Federationist, by reason of the fact that in November of that year, both in the preparation of his report and the attendance for two weeks at the conventions, it was practically impossible to write any editorial, and he usually published his reports to the conventions of the A. F. of L. as a substitute for any editorials which he was unable to write.

It represented his beliefs and opinions at the time he wrote it. When he understood that he was prohibited from giving or selling a copy of the proceedings of the Norfolk Convention of the A. F. of L., either bound or unbound, no further copies were sold. Has no recollection of taking steps to prevent that at any time.

In saying in the same report, "for one, I am unwilling to be placed in such a position, the position referred to, was that of not reporting the history of the case to the A. F. of L., and of not giving or selling copies of the proceedings. He was not willing to do that so long as the provisions of the injunction remained as they were, but they were modified by the Court of Appeals, so as to permit the doing of the things under which these charges were pending against his colleagues, and himself.

Took no steps to prevent the circulation of the proceedings of the Denver Convention of the A. F. of L., or of any other proceedings of any other convention. Regarded that as the historical life of the

A. F. of L., and that they were no way included in the injunction, until the time to which he has referred that it was brought to his attention by Mr. Davenport in the first contempt proceedings. He then saw that this view of it was contained in the injunction.

(Page 1123.) The Constitution provides that the per capita tax of one-half cent per month for each member of each organization must be paid. It should be paid monthly, and if not paid within three months the organization becomes suspended or is severed from the A. F. of L. There is another constitutional provision which authorizes the levying of an assessment, not more than ten assessments of one cent each within one year, and that an organization which does not pay such an assessment becomes suspended from or is severed from the A. F. of L. There was some of the organizations whose members were engaged in industrial disputes in defense of their interests and required every penny that they had or could raise for the purpose of buying bread for their contending men and women, and in addition, during that time, they were suffering from industrial depression in which large numbers of workmen were unemployed, and several of the organizations might not be in a position to pay an assessment if it was levied, and that would then involve their suspension or severance. They did not prefer to avoid that inconvenience to their organizations by violating the

injunction by issuing the urgent appeal. They preferred to make an appeal for voluntary contributions.

609 Stating in the urgent appeal that there was a conflict between the Federation and the Stove company, and that organized labor be asked, together with its members and friends, not to buy its product, was not deemed in violation of the terms of the injunction, and had no such purpose. The purpose was to give, as concisely as they could, the principles for which they were contending, and that in order that those who might have a few pennies to contribute, might understand the cause, it was necessary to inform them of the things charged, or the things for which they were contending.

(Page 1125.) At that time witness did not understand that the injunction prohibited his mentioning, in any manner, that there was a controversy between the company and the Federation. Did not believe that the references made in the urgent appeal, or editorial, were in violation of the terms of the injunction, and it was the insistence upon the right of free speech and free press.

The following words, contained in witness's report to the Toronto Convention, page 92 of the printed proceedings:

"The original injunction not only prohibited the publication of the Buck's Stove and Range Company in the 'We Don't patronize' list of the American Federation of Labor, but also enjoined the right of free press and free speech, forbidding any reference whatever to the Buck's Stove & Range Company, either oral or printed."

were true at that time as witness understood the injunction, that is at the time when he wrote them.

The following words in the editorial of the February, 1908, Federationist:

"The injunction orders that the facts in controversy between the Buck's Stove & Range Company and organized labor must
610 not be referred to, either by printed or written word or orally."

were true as he understood the injunction at that time. He understood that the urgent appeal and editorial which accompanied it, did not refer to the facts in such controversy in such a way as would be in violation of the terms of the injunction. Witness used the following language in the editorial of the February, 1908, Federationist:

"With all due respect to the court, it is impossible for us to see how we can comply with the terms of this injunction. We would not be performing our duty to labor and to the public without discussion of this injunction."

The following words from the same editorial:

"We would be recreant to our duty did we not do all in our power to point out to the people the serious invasion of their liberties which has taken place."

were in accordance with witness's view at that time of the injunction.

Witness was confident at the time the following paragraphs were printed in the April, 1908, Federationist, pages 295 and 296, as he is confident today that they were not a violation of the terms of the injunction, the lines referred to being as follows:

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave's Buck's Stove & Range Company of St. Louis.

"Fellow workers, be true and helpful to yourselves and to each other. Remember that united effort in cause of right and just must triumph."

This was a statement of fact. Did not understand that the injunction prohibited him from stating a fact of that character. The article to which witness's attention is called, in his opinion, did not violate the terms of the injunction. It did not conflict. In addition — this statement is a few lines taken from a context of a circular of probably 1,500 words bearing upon legislative reform
611 that the Federation desired, to conserve human life and limb; legislation of a reformatory, necessary and humane character. The language following that quoted by Mr. Darlington being:

"Fellow workers be true and helpful to yourselves and to each other. Remember that united effort in the cause of right and just must triumph."

"Thanking you in advance for your cordial and prompt cooperation for the common uplift of the toilers and of all our people, and hoping for renewed energy and success for yourselves."

This was a circular similar in import which was issued every year or from year to year, and the exhortation to be helpful and cooperative and the expression of appreciation and gratitude in advance was the language which he usually employed in addressing his fellow workers. Approximately 10,000 circulars were sent out to state branches of the A. F. of L., and the city central bodies. There were about 550 at that time perhaps. The circular was printed in the Federationist which was sent to every subscriber. They were not sent to all subscribers separately.

In putting this paragraph in the circular

"Bear in mind that an injunction issued by a court in no way compels labor's friends to buy the product of the Van Cleave Buck's Stove and Range Company in St. Louis."

there was no purpose other than the statement of a fact, the same as a statement of facts in numberless other instances in which the witness has included, not as editorials in the Federationist, but as editorial notes, or as squibs in the publication or elsewhere. Wished his readers to bear in mind the matter stated in this paragraph, which were those he has enumerated. The circular was not published in the Federationist as a circular to the state branches
612 and the city central bodies, but is printed for the news that such a circular had been issued. The phrase quoted was a mere phrase which might have been omitted without altering the sense of the paragraph; it was not put in for any purpose. He

might have omitted the words "bear in mind." It was a phrase to begin a paragraph which had no particular meaning either one way or another. Did not necessarily mean to ask anybody to bear that in mind.

Q. Why did you wish to advise anyone that an injunction could not compel labor or labor's friends to buy the product of the Buck's Stove and Range Company?

The witness answers that an injunction is now a mandamus, and there are not so very many people who are laymen who understand the difference.

Was a mere statement of fact. Witness had no object except to state a simple fact. There was no intention to carry on, or aid, or abet a boycott against the Stove Company. Witness states under his oath that there was no intention to carry on or aid or abet a boycott against the Buck's Stove and Range Company, or to suggest that they could not buy those things and should not buy them. That was not the purpose. He does not mean to tell the court that he put this in because he feared some of his readers would think they were bound to buy the Buck's stoves and ranges, or were compelled by the injunction to do so. Is unable to state any purpose of the article other than that it was a statement of fact. Wrote the editorial in this same April number, page 279, and reading as follows:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range."

Its object was nothing more than the statement of a fact. The words "it should be borne in mind" were simply a phrase witness had become accustomed to using, rather than as to its importance. He used it as a phrase that had no particular significance. The words are a phrase which he had used several times in connection with that and in connection with the discussion of the case, and discussion in connection with many other things. It had no particular significance. It was merely the desire to make a statement of fact. The words "it should be borne in mind" have no significance, and were not necessary to it. It was without the slightest intention to affect the business of the Buck's Stove and Range Company, published the words:

"There is no law, aye, not even a court decision compelling union men or their friends of labor to buy a Buck's Stove or Range,"

as a statement of fact. It was not intended, either directly or indirectly, to aid or abet a boycott of the Buck's Stove and Range Company, or to interfere with its business. It was without the slightest intention to affect its business. The words "no, not even a Loewe hat," were put in without any intention to affect the business of Loewe. It was the printer's make-up that the paragraph just referred to, immediately followed these words:

"The temporary injunction issued by Justice Gould, of the Court of Equity, of the District of Columbia, in the Van Cleave Buck's Stove and Range Company of St. Louis against the American Fed-

eration of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia."

Sometimes as editor, the witness has something to do with the make-up of the paper, and sometimes not. Had nothing to do with having these two paragraphs placed in immediate succession, other than that they were printed as fillers to fill out the pages. Has no explanation to make of the fact that these two fillers were put together in one paragraph in the July Federationist, as follows:

"The Supreme Court of the District of Columbia has made permanent the injunction issued by Justice Gould enjoining the American Federation of Labor, its officers, its affiliated unions and their members and friends from declaring that the Van Cleave Buck's Stove and Range Company of St. Louis is on the unfair list of the American Federation of Labor or the publication of that statement in the American Federationist. An appeal will be taken to the Court of Appeals of the District of Columbia, and, if necessary, to the United States Supreme Court. The injunction does not compel anyone to buy the Van Cleave Buck's stoves and ranges, nor has any decree been issued compelling anyone to buy Loewe's hats."

During a large part of June, July, August, September and October, witness was not at the headquarters of the A. F. of L., and the make-up was not under his direction, although he assumes responsibility for it. He wrote the editorial just read from the Federationist of July. Announced in the July Federationist, as a statement of fact, that the injunction had been made permanent, and would be appealed, and that it did not compel anybody to buy the Stove Company's products. Having stated it in the April number, he repeated it in the July number simply as a historical fact in the history of this case. It required repetition and repetition to make the people understand the great wrongs inflicted upon them. The editorial in July was upon the subject of Congress's failure to provide a remedy which we sought to obtain at the hands of Congress, and the title of the editorial is "Congressional Pertidy—The Responsibility—Labor's Duty." Is an editorial political in character, written for the purpose of arousing the attention and interest of the citizens of the country that they might take action in furtherance and be helpful to the relief which they sought at the hands of Congress. The paragraph quoted was a continuation of the editorial, all of it simply separated by dashes. From the cover of the title page, the whole issue was of a political character, the caption being "Injunctions in Labor Cases—Economic Freedom." The entire editorial—"Judge Uphold's Labor's Contention," referring to the decision of Judge Charles M. Walker, of Cook County, Illinois, and the whole of it on the page from which quotation is made, is as follows:

"Insistence and persistence in the cause of right and justice must triumph.

"The only people of the country whose liberties are menaced are the wage-earners. To secure their rights and to secure justice for

them involves the achievement and establishment of justice and liberty for all our people for all time.

"Every effort should be put forth to organize the yet unorganized and bring them within the beneficent fold of organized, united labor."

The further:

"Organized labor everywhere should begin preparation for the appropriate and universal celebration of Labor Day, September 7, 1908."

Then comes the quotation to which you referred.

It is one continuous thought and purpose to arouse the public, the citizens of the country, to the responsibility, to the dangers and the rights to which the people are entitled. Technically the black lines on that page separated it into different editorials, actually, it is one continuous expression of protest. These black lines do not indicate any breaking up in the different editorials; they are separate, but the thought pervades through them all. It is several editorials, distinct and separate. Has not been saying to the contrary. It is one continuous thought. They mean separation, one from the other. There is a continuous thought running from them all. The same thing is true in the editorial in the April number, pages 276 to 279.

The two paragraphs to which witness's attention has been called, might as well be continuous as separate. Cannot say whether that form is a matter of accident in the printer's make-up.

(Page 1145.) Reference is made to the American Federationist for June, 1908, page 467, being part of speech of Mr. Gompers delivered at Chicago, as follows:

"I might say just parenthetically about the hatters' case that you are not permitted to boycott the Loewe hats, but I want to call your attention to the fact that there is no law compelling you to wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. That applies equally to Mr. Van Cleave's stoves and ranges. And, by the way, I don't know why you should buy any of that sort of stuff."

Witness says he did not know that was published until after he saw it published. Nearly all the time it happens that his speeches are printed in the magazine without his knowing it. He was aware that his speeches were liable to be published without his knowledge. Made his central labor reception speech in November, 1908, and that was published without his knowledge in the Federationist. Did not see the Indianapolis speech until after it was in the Federationist, and it was published without his knowledge until after it appeared. The Chicago speech was published without his previous knowledge, also the New York speech. To the question whether he took no steps to prevent this when he saw what his people were doing, he answered that he did not know what they contained. Did not read them until after these cases were begun. Essentially as to the language, knew he had made the speech at Chicago. Witness is asked the following question:

And you knew that you were under injunction not to refer, by

either speech or printing, to the controversy between the American Federation of Labor and the Buck's Stove and Range Company.

MR. RALSTON: I want it to go on the record as applying not only to this, but to the previous and subsequent questions, that these questions are relating to events after the 23rd of March, 1908, and therefore are subject to the objection that they are not embraced in the charges.

MR. DARLINGTON: I agree that the objection may apply
617 all through, without being repeated, wherever applicable.

A. I did. As a citizen of the United States for more than forty years, interested in the presidential campaign, as interested as any other man was in trying to influence its result, I was engaged in that campaign for the purpose to secure relief for my fellows and myself from the evils and wrongs of which we complained, and it was essentially to explain to my fellow citizens the reason why I had entered into that political campaign, and I could not have given the reasons without giving the typical case about which we were—the typical case which formed so good an example of the invasion of the right of free speech and the right of free press, and it was for that purpose and that purpose only, and not either with the intent of violating the order of the court or being disobedient to it, or to be in aid of—for the purpose of aiding or abetting a boycott upon the Buck's Stove and Range Company or any other company. He also knew that in each of these speeches he had referred to the controversy between the A. F. of L., and the Stove Company, and for the same reasons. He further knew that each of these speeches was being successively printed in the Federationist; and to the question whether he took any steps to see that the injunction was obeyed by the American Federationist, of which he was editor, he answered that he believed that there was no intention to restrain a citizen of the United States from making any kind of speech that he thought fit—that he thought would advance the purpose of the candidate for whose election he was campaigning. To the question whether he was so little concerned in obeying the injunction of the court that he did not ever examine these reported speeches of his in the Federationist to see whether they conflicted with the Federationist or not, he answered that he did not; that he has already stated that he had a pet aversion, a very strong aversion to reading anything that

618 he ever said which may appear in print. Besides was exceedingly busy with a lot of work in the interests of his fellows, but was not too busy to try to obey the injunction of the court. Tries not only to be obedient to the orders of the court, but is a law abiding citizen in every way. During much of the period was on the road engaged in the campaign for months. Does not know by what means these speeches were obtained, some were published with credit given to the newspapers in which they appeared, others without credit at all; but how they came to reach the office, he does not know.

Witness's attention is called to the following paragraph in this June, 1908, publication:

"I might say just parenthetically about the hatters' case that you

are not now permitted to boycott the Loewe hats, but I want to call your attention to the fact that there is no law compelling you to wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. That applies equally to Mr. Van Cleave's stoves and range. And, by the way, I don't know why you should buy any of that sort of stuff. I won't; but that is a matter to which we can refer more particularly in our organizations. We do not want to take up the time of this meeting with a discussion of that sort of thing."

In making his Central Labor speech, saying that he had done the things which he was charged with, and referring to publications in the Federationist, he did not have that in mind. What he had in mind was the editorial and circular and the urgent appeal. In using the expression "I won't; but that is a matter to which we can refer more particularly in our organizations," it was the difficulty, he thinks, he experienced in trying to find something by which to close the sentence. Does not know whether he used that term. Is not sure whether he used that expression. Has
619 allowed it to remain in his magazine uncorrected and uncontradicted for about three years. Published in the September number the petition containing this matter, as a charge brought against him, and charging this identical matter. In publishing the petition, he thinks he can say truthfully that he had not read it at the time. And being asked whether he had not answered this very charge under oath before September, 1908, he answered that there were so many petitions and rules to show cause he could not keep track of them all. Is not sure but he gave directions for its publication. The publication of the petition in the Federationist, was made for the news, the history of the case, secondly, that one copy of such a document is not easy for a man to preserve, and he published it in order that they might always have a number of these petitions on hand, to which they could refer. As to this speech, his attention was not particularly drawn, or directed to that section of it containing that quotation, of that it would, in the publication of it, be any violation of the order of the Court. Not even when he answered under oath whether he had done it or not. In using the words "We do not want to take up the time of this meeting by the discussion of that sort of thing," he was discussing the decision of the courts in the hatters' case, which held that the action of the voluntary associations of workers came under the violation of the Sherman anti-trust law, and incidentally or, as it states there, parenthetically, he referred to this case and to the Loewe case. Tried to avoid the discussion as best he could of anything forbidden by the Court's order; yet he had to make some reference to it in order to make his position clear, but doubts whether this is accurately stenographically reported. The sort of thing referred to was the hatters' case and the injunction issued against them. The matter immediately preceding is that witness did not know why they should want
620 to buy it. It is so stated here. Is not sure that he used the phrase about taking it up in the organizations rather than at a public meeting. If he did, it was simply because he could not find any other phrase at the moment to close the sentence. Has
31-2477a

not repudiated that language, and does not know that he has heretofore cast any doubt upon whether he has used it or not. Does not think his attention was called to it. Knew that the Federation of Labor was enjoined from publishing in the Federationist specifically articles calling attention to the controversy between the Company and the Federation, and that it was his function or duty as President, and Editor of the Federationist, to see that that order was obeyed, and that nothing appeared in the Federationist in violation of it.

Witness's attention is called to the following from the September, 1908, Federationist, page 720:

"I notice that President Gompers, Secretary Morrison and Vice-President John Mitchell have been haled to court charged with violating the celebrated injunction order of Judge Gould. Money makes the mare go, and Mr. Van Cleave's money is making this contempt case go, but we have had Van Cleaves before and will have them in the future, and labor will rise in its might and crush Mr. Van Cleave."

Witness says that he did not read that until his attention was called to it in these proceedings. He could not tell what the correspondent had in mind in saying "Labor will rise in its might and crush Mr. Van Cleave." His understanding of the language was that it was used in a figurative sense. That the rights of labor, the rights for which they had been contending for centuries would be achieved after Mr. Van Cleave and other opponents would go by the board, die, crush. Regards it as a mere figure of speech.

621 Figures of speech are meant to inculcate some thought, some idea. The idea that the spirit of labor will live when the spirit of Van Cleave in antagonizing labor will be crushed. The writer is a boilermaker and not a magazine writer or lawyer. Invited him to write for the magazine because he is a practical, hard headed man who is honest and faithful, and earnestly engaged in the work for the betterment of his fellow men, and it was he and such as he that the witness invited, and among them professors of colleges. Witness means to say that he denies that he understood the article as meaning labor would destroy Mr. Van Cleave's business, and he meant to say further, that he did not see this utterance of Giltthorpe's in the Federationist, or elsewhere, until his attention was called to it by these proceedings, although editor of the paper, and under injunction to see that nothing of that sort went into it. Is not only the editor of the paper, is required to do other things, which he tried to do as best he knows, and also tried to comply with the terms of the injunction, as best he knew how.

Witness's attention is called to the following extract from his Indianapolis speech, published in the November 1908, Federationist:

"I am enjoined by that court order from even mentioning the case in any manner," he said. "I am in contempt of court right now for speaking of the case, but I propose to speak of it just the same. I may go to jail, but I shall discuss it. If I don't, I'll explode."

Witness states there is no explanation he can give about that. It was language attributed to him by the N-ws. The entire article does not show that it was other than a newspaper report of the

speech—parts of the speech. Has never prior to this moment denied using that language. Is not sure whether he used the language in that way. Is not positive.

622 Delivered an address in the City of Baltimore in October, 1908.

Mr. RALSTON: That does not come within the time.

Mr. DARLINGTON: You have that objection running straight through.

Mr. RALSTON: Yes.

Witness's attention is called to the following from the 14th charge as having been uttered by him on that occasion.

"The injunction issued against me by Judge Gould was based on Judge's Taft's decision. By that injunction I am restrained from talking to you about this case. No labor leader can mention it on speech or circular. I am enjoined from telling you I won't buy a Buck's stove or range. But I won't buy one just the same. I am enjoined from telling you there is no law compelling you to buy one; but there isn't such a law."

Witness is asked if he made such a speech and says he did substantially; he does not know whether he used that language. Witness's attention is called to the following language:

"Because of this case I am on trial and may have to go to jail. There is no fun in going to jail, and I don't want to go; for no man would feel more keenly the sting of having his liberty restrained. But the whole world would be a narrow cage were I denied the freedom of speech. I say these things with a full consciousness of what the responsibility may be. But jail or no jail, I'm going to discuss the principles of liberty."

and witness says that *that* this, also, is substantially what he said on that occasion.

Witness's attention is called to his Indianapolis speech on page 984 of the November, 1908, Federationist, as follows:

"As long as I retain my health and my sanity I will speak on any subject on God's green earth. And as editor of the American Federationist I will discuss every subject that appeals to me as just and right. I have not surrendered and am not likely to surrender the right of freedom of speech and the freedom of the press."

623 Witness is asked whether the foregoing is substantially a part of his address at Indianapolis, and says yes. That is the contention which they have made all through the injunction proceedings, and for which they were made to show cause why they should not be punished as for contempt of court, and these present cases all arise from the purpose to maintain the freedom of the press and freedom of speech, and if going to jail is involved in that exercise, he will not flinch.

At the time of making the Indianapolis address, there was not any one injunction to which he had reference. It was to the species of injunctions that had come into operation and were being used, one being built upon another, precedent upon precedent, by these injunctions that they were contending against, and the fact that an in-

junction was then pending against the A. F. of L. and its officers was simply also an incident, a mere incident to the general principle for which they were contending, and that speech was made during the presidential campaign in furtherance of the election of a candidate of a party who and which he pledged himself to further the legislative relief which they were seeking, and was in furtherance of witness's political views during that campaign. The injunction issued by Justice Gould was one of the incidents to which witness refers. Other injunctions had been granted against witness, or applied for, to restrain his speaking—the injunction issued by Justice Jackson of the Federal Court of West Virginia, in which he forbade speaking or meetings or gatherings, or persuading men to go in an organization of the miners, or enjoying public meetings. That was some years ago. Witness does not know what became of it.

624 There was that injunction and several others which witness cannot now recall, in which he was included. The injunction of Justice Jackson was in existence at that time. Does not know whether it was continued, whether it was made permanent. Knows it was issued and served upon him, and there were injunctions served upon John Mitchell and his associates in the U. M. W. of A., in which their associates, in the language of the injunction, "their conspirators and co-conspirators and agents and all else," which included every labor man or woman active in the labor movement of the country. There was an injunction issued by a court in Denver, Colorado, about that same time. Could not tell in what case. Made a report of it to one of the conventions. The injunction of the Stove Company was one of the injunctions had in mind in using that language. The language applied to it as a general proposition, but not particularly.

(Page 1169.) Witness's statement at the Central Labor reception, that the things he had been charged with, he did, referred to editorials and articles published by him in the Federationist, including the urgent appeal for funds with which to defend this cause—substantially that. It also included public speeches and addresses like those delivered in Chicago, Indianapolis, Baltimore, New York, etc., in the political campaign. His admission of "What I did" in that sense, applies as well to those addresses as to these circulars. His statement: "The things I have been charged with, I did. I have not denied them. I have discussed them on the platform, as I discuss them here. I have written circulars about them," witness means substantially as in the Central Labor Reception speech.

Witness's attention is called to the following language
625 in his Central Labor Union address:

"Now you know the Supreme Court of the District of Columbia has issued an injunction against the A. F. of L., its executive officers, our affiliated organizations and their members and friends and sympathizers and agents, attorneys and counsel, and conspirators and co-conspirators and what not, and among these you are included."

and asked whom he meant by "you," and says he meant his audience.

Witness's attention is called to the following further language in that address:

"The Court issued the injunction prohibiting us from publishing, from printing, from speaking, from whispering, that the Van Cleave Buck's Stove & Range Company is unfair to organized labor, and for anyone to publish, to print, to write a letter, or to speak of this is in violation of the terms of the injunction."

and asked if that was substantially his language on that occasion, and the way he understood the injunction, and says he has no recollection. Does not know whether that is a correct reproduction of what he said, but in substance it is, and it was in substance his understanding of the injunction. Thinks he made the following statement:

"The dispute with the Buck's Stove & Range Company sinks into insignificance in view of the larger and broader question involved."

Witness thinks he made that statement, and is under the impression that he repeated it in his testimony in this hearing. Just preceding it is this:

"Besides this, I have proposed to discuss the principle involved. How is it possible to arouse the attention of the public, how can we reach the conscience of the American people, unless we call their attention to the great wrong about to be committed. I insist upon the exercise of the right of free speech. It is not given to us by any law or any constitution; it has grown with man, it is part of his very being, as is his thought. Freedom of the press is the freedom of expression through a better means than by word of mouth, and these things are written into the Constitution of our country, not as a mere condescension, not as a mere complementary thing, but as a vital reality. The right of free speech and free press mean more than a mere utterance. The dispute with the Buck's Stove & Range Company sinks into insignificance, in view of the larger and broader question involved. The First Amendment to the Constitution of the United States was this one of free speech, free press and free assemblage. The experience of ages had shown why this was necessary. Man does not require a Constitutional guarantee to bow low to the powers that be. It does not require a constitutional guarantee of freedom of speech to sing paeans of praise of Government officials or to tell President Roosevelt he is a good fellow.

"The right is given by the Constitution to say the things which displease the powers that be. I am sure the people of this country have come to learn a little more of the fundamental wrongs that are involved in the abuse of this injunction right as it is applied to the men and women of toil, and this is due to our activities in the last campaign."

Witness says that on this occasion, after stating to his audience, that he was enjoined from mentioning, speaking or even whispering the fact that there was a dispute between the Buck's Stove & Range Company and the A. F. of L., he did mention the fact. He did so in view of his understanding of the injunction, because it was the very principles for which they were contending, the freedom of

speech and freedom of the press, and the injunction transcended and exceeded the power of the court to issue such an order forbidding the discussion of a great principle, of which the Buck's Stove & Range Company injunction was a mere incident. Asked why as a law abiding citizen he did not at least obey the injunction of the court, the deciding power, until some other tribunal had passed upon his test case, he answered that it was a question of how best to secure a test—a decision of a test case—of the case of which we proposed to make a test, and to bring it plainly and definitely before the highest tribunal—legal, judicial tribunal in the country. Asked if he means, in order to get a satisfactory test, he violated or disobeyed the injunction, he answered that it was not a question of disobeying an injunction, nor was there any intention of disobeying it, but

627 to make the issue clear and clean cut. It was simply an incident, using it as an illustration essentially to convey the idea to the audience. The injunction prevented thought much less utterance. Witness could not deny himself, and contended that the court exceeded its power in forbidding both thought and expression. Witness has read from the same number of the Federationist, same page, the following:

"We have a dispute with the Van Cleave's Buck's Stove & Range Company; I have been enjoined from saying that I won't buy a Buck's Stove or Range, and I won't".

Witness says this was not in violation as to whether he would or would not buy a Buck stove or range. Asked whether he considered his statement in a public address of the fact that there was a dispute, and that although he was enjoined from saying he would not buy a Buck's Stove or Range, he would not buy one, whether he considered this consistent with obedience to the injunction, he answered that the injunction did not forbid him as an individual from buying them. The mere personal utterance that he would not buy a Buck's stove or range was not forbidden by the injunction. The extract just read was not a reference to the dispute, it was a mere declaration that he would not buy a Buck's stove or range. He would buy it now. The utterance had no reference to the fact that there was a dispute between labor and the Buck's Stove and Range Company. It did not seem to witness to — a reference to it at all. He had no other reason for saying he would not buy one, except the fact this dispute was in existence. The quotation in the February, 1909, Federationist, beginning at page 130, in an editorial including the words:

"We will speak out, we will be heard,
Tho' all earth's system crack;
We will not 'bate a single word
Nor take a letter back",

was not the witness's utterance, but a quotation from a poem. It was quoted with some application in defense of the right of free speech and free press. Upon the general principle of free speech and
628 free press, witness meant he would not abate a single word, nor take a letter back of anything written or spoken during the pendency of the injunction, or any other time. There

were several reasons why the January issue of 1908 got into the mail before December 23, 1907. One was that they endeavored to accommodate the employees of the office by giving them an opportunity of a holiday by conforming to the convenience of the printers, which they often do when holidays are impending about the time of the issuance of the American Federationist; to accommodate the employees of the Postoffice Department, and the other reason was that witness felt so keenly the wrong which had been done by the injunction that he was not in the mood to yield a right that he had until the injunction became effective. The circulation may have been somewhat in anticipation of the usual time of mailing. Another reason therefor was—he is not sure of this, but inclined to believe it—by reason of the general practice in the office and with the printers. The front part of the Federationist usually consists of articles contributed by others or by himself, and when it makes up a signature which is a technical word in printing, meaning 8, 12, 16 or 24 pages, leading up to the editorial, they are printed in advance. That signature is printed allowing what he may calculate for the space which he contemplates using as editorial space, either already prepared or in the course of preparation, allowing a sufficient number of pages for these editorials. The financial report, official statements, organizers' reports, etc., and the then "We Don't Patronize" list which they then published. If that made a complete whole as a signature 629 or two signatures, they were printed in advance, and his impression was that the signature or signatures in which the "We Don't Patronize" list was included, was printed possibly six or seven days in advance of December 23, 1907. It is true that the circulation was earlier than the other eleven months of the year, but not unusual when an important holiday is impending. Thinks the printing of the December Federationist was as usual. The Washington Law Reporter Company printed it. Thinks he did not request the Law Reporter Company to get out the Federationist a little earlier than usual that month, but if it was, it was not entirely due to the injunction, but other reasons also. It was partly due to the injunction which forbade the publication of the name of the Company on the "We Don't Patronize" list. The injunction became operative and effective on December 23, 1907, and until the undertaking was made, the injunction had no force or effect. As already stated, he endeavored to have it out earlier for all the reasons mentioned, one of which was the fact that he did not know when the injunction would become operative, or if it would ever become operative. Did not want to yield any of the names in the "We Don't Patronize" list for January, including the Buck's Stove & Range Company. Could not tell the exact date he got it in the mails. Does not know if it was the day before the bond became operative. Do not know anything at all about the bulk of the issue being mailed December 22nd which was Sunday. His understanding of the injunction was as follows from the February, 1909, Federationist:

"It must be remembered that the defendants, their friends, sym-

pathizers, agents and attorneys were enjoined from mentioning directly or indirectly, in printing, in writing, or by word of
630 mouth, the original grievance, the original contention, the injunction, or anything in connection therewith."

Such had been his understanding almost from the time of its issuance. Its proportions grew as he read and studied it. The part just cited was printed a year and two months after the injunction came into effect. Is under the impression that his original understanding of the injunction was not that it was so extensive as it impressed him later. This editorial was written fourteen months after the injunction of Justice Gould was issued, and became operative, and its ramifications grew upon him every time he read it. There was not any time subsequent to the February, 1908, editorial and the urgent appeal when his understanding of the injunction was different from what he expressed it in the February, 1909, editorial.

Witness's attention is called to the following language from the February, 1909, Federationist, page 144:

"Some carping critics have said, 'Why not obey the terms of the injunction until the courts of last resort have rendered their decision.'

"We answered that such a course was absolutely impossible. It would have perverted and suppressed the lawful proceedings of a convention of the American Federation of Labor, a lawful gathering and body. It would have conceded the surrender of the principles of freedom of speech and of the press."

Witness says the examiner is right in assuming that he said what he said. That it was true. The language conveys exactly what he meant to say, and what he says now. To the question whether it was true that he did not obey the terms of the injunction until the courts of last resort had rendered a decision, he answered that he wanted to obey so far as was possible the order of the court. It was his intention, so far as he was able, to comply with its terms. Wherein the order of the court denied him the constitutionality guaranteed right of free speech and free press, he proposed to help in testing

631 that contention—it is for the court to determine whether he has obeyed or disobeyed, it is not a question as to whether witness's judgment is warranted upon the question. He acted on the statement of principles contained in the extract quoted. It was necessary for the proceedings of the convention of the A. F. of L. to be printed and to be utilized for the purpose of the history of the labor organizations of the country, and distributed to the delegates at the convention and to the laborers of the affiliated organizations, their editors, the Library of Congress and officers of the Government of the United States. But these nor any of them were ever intended or expected to be in aid or in furtherance of a boycott upon the Buck's Stove & Range Company, or upon any other company. The injunction could not be obeyed without perverting or suppressing the lawful proceedings of the convention of the A. F. of L. The proceedings were a historic record of that convention, the continuity of it, and the mere handing of the copies of the pro-

ceedings of the convention to the printer to be printed, or to be taken down by the Secretary in notes, to be printed by a printer, and revised by him—if that carping criticism is to maintain, that would be equally a violation of the terms of the injunction, as would be a distribution of the printed proceedings to the parties indicated. He could not obey the terms of the injunction until the courts of last resort had rendered a decision, without perverting and suppressing the lawful proceedings of the convention of the A. F. of L., because the proceedings, among other things, contained the history of the cause under which these proceedings are held as held by the committee, and the injunction prohibited him circulating any document which did that.

632 In referring to "Lawful proceedings of a convention of the American Federation of Labor", witness was referring to the proceedings of the Convention of 1907. The following language is read to the witness from the same editorial, pages 145 and 146:

"We had a right to disregard the injunction in those particulars, of the right of free press and free speech, but we realized at all times that we did so at our peril—that is, the peril of being judged guilty of contempt and of receiving the most extreme sentence which any judge might impose."

Witness is asked what he did at his peril, and says that he exercised the right of free speech and free press, and the sentence of the editorial quoted, seems to indicate that it was a good forecast of coming events. In reply to the question whether he disregarded the injunction in certain particulars, he answered that he continued to exercise the right of free press and free speech and that is done by every writer and publisher at his peril.

Witness's attention is called to the following language in this same editorial in the Feb. 1909, *Federationist*:

"There will be no more Patrick Henrys and Washingtons and Jeffersons and Lincolns, to carry forward the world old human struggle for liberty. In all humility, yet if necessary, we shall be proud to tread in the footsteps of that long and splendid procession, winding down the ages of those who have suffered that the torch of human liberty might be passed from hand to hand and thus reach down not only to the people of our own time, but to the countless millions yet unborn.

Witness states that he is too diffident to claim originality in this expression. It is the joint production of John Mitchell, Frank Morrison and himself, and in conformity with what he said this morning in his testimony—that while he does not pretend to be either a Patrick Henry, or a Washington, or a Jefferson, or a Lincoln, he knows his own shortcoming in regard to the attributes of these great men, yet he is a humble follower of their precepts and adheres strongly to their faith, and works for a realization of their hopes and aspirations. It is the joint language of the three respondents.

Did not state earlier in his examination, that he regarded the Supreme Court of the United States as the only constitutional tri-

bunal empowered to pass on questions of law that affect the constitution. Said it was the final arbiter. The test case which they undertook to press for a conclusion was not considered by the Supreme Court of the United States, because it regarded that the case had become a moot case, and it declined to consider or pass upon it. Accepts the decision of that tribunal as the final word of the highest judicial tribunal of the country, from which there is still another appeal—to the people and Congress, who at times reverse decisions of even the Supreme Court of the United States, by statute law or constitutional amendment. When the Supreme Court of the United States has spoken, in so far as any citizen's course is concerned, he must yield obedience and endeavor, if he still believes that he or his fellow citizens have been wronged, to appeal to the people to reverse that decision by action of Congress in the enactment of legislation, either by statute or by constitutional amendment; in the meantime obeying it.

Is not aware that the Supreme Court held in its decision in the contempt case, that courts have the power to enjoin boycotts. Was not aware that the Supreme Court of the United States in the contempt case held that parties were bound by injunctions until they were set aside by some higher authority, and declared: "If a party can make himself a judge of the validity of orders which
634 have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls 'the judicial powers of the United States' will be a mere nullity. Knew the Supreme Court of the United States reversed the sentence of Justice Wright which was maintained by the Court of Appeals, and that he was interested in, and thinks he has not read fully, or thoughtfully the decision of the Supreme Court of the United States in that case.

Witness's attention is called to the concluding paragraph of the charges under which he is now before the court:

"With regard to each and every of the acts, statements and publications above set forth, the said Samuel Gompers asserted, and it may be he then believed, that the injunction was not binding upon him because of what he claimed to be his constitutional right of free speech and a free press; and it may be that, now that this contention upon his part has been determined by the Supreme Court of the United States to be unfounded, he may be prepared to make such due acknowledgment, apology and assurance of future submission to the court as may sufficiently answer the necessary purpose of vindicating its authority, and that of the law."

Witness states that his understanding of the decision of the Supreme Court of the United States, only casually obtained, was that it did not decide upon the question of the right of free speech and free press, and he interpreted that last paragraph of the committee which presented the charges as simply an effort to humiliate him and break his heart and spirit, and it was a thing he was not inclined to permit. To the question whether he considered an invitation to recognize a decision of the Supreme Court of the United States as final and an offer to govern his conduct in accordance with

it in the future as an effort to humiliate him and break his heart, he answered that the very language was an insult—the language employed by the Committee where he had been guilty of no wrong.

635 If he had been guilty of wronging any man or woman, or the merest child on earth, he would abjectly apologize and endeavor to rectify any wrong which he may have done, but, conscious of the fact that his whole course had been in an effort to contend for the principles of free speech and free press, the offer of an apology—the suggestion of an apology was an insult. He had violated no law. There was an allegation that he had violated the terms of an injunction, the principles of which he was contending for upon the ground of free speech and free press, and a right to the exercise thereof. Has no other explanation to make of his refusal to avail himself of an opportunity of reading fully the Supreme Court decision to see whether what the Committee had said about it was true. Asked if the Committee are right in their opinion that the Supreme Court did deny his contention that the doctrine of free speech and free press enabled him to violate the injunction against said publication as he had been guilty of, he thought it would be humiliating to him to make an apology to the court and assure it that in future he would obey the decrees? he answered that it is not a question, nor is it the question in contention now as to what he shall do in the future, nor is he called upon now to say what he shall do in the future. He simply now says he shall endeavor to contend, so long as life remains in him, for the right of free speech and free press, untrammelled by an injunction.

Q. The Court may consider your willingness to obey its order in the future a more material circumstance, Mr. Gompers; but if you do not think so, I have no further questions to ask you.

A. I thank you.

636

Digest of Testimony.

JOHN MITCHELL, being first duly sworn (page 1196) testified in substance as follows:

That he is one of the defendants, is Vice President of the American Federation of Labor, and a member of the Executive Council, and was in 1907 and 1908. Has seen and read the Urgent Appeal; did not sign it personally, or know of it before it was printed, or sent out for distribution on January 21, 1908; was in Indianapolis attending a Convention of the United Mine Workers of America then in session which began according to his recollection, on Jan. 21st. Did not see the Editorial by Samuel Gompers printed in the *Federationist* in February headed "A Review and Protest" before it was circulated. Took absolutely no part in either the printing or the circulation.

The rule of the Council is that any official document issued by the American Federation of Labor may be signed by each member of the Executive Council—that the officers of the American Federation of Labor may sign members' names unless they specifically dissent and such has been the custom in the American Federation of

Labor, as he understands it for some years. His understanding is entirely that his signature was attached in pursuance to that custom and of course with no dissent on his part. Had he been present he should have authorized the use of his signature.

Took no part in the statement written by Mr. Gompers referred to in the second paragraph of the Committee's Report in which he recites an alleged position taken by one of the counsel for the Buck's Stove and Range Co. Knew nothing of it.

Was President of the Annual Convention of the United Mine Workers of America in January, 1908, and Vice President of the American Federation of Labor. The Mine Workers were affiliated with the American Federation of Labor but absolutely inde-

637 pendent and self-governed. The American Federation of Labor has absolutely nothing to do with the internal affairs of the United Mine Workers of America and exercises no control over its affiliated or international organizations.

Presided over that Convention during the entire session, frequently called others to the chair temporarily. Has no recollection of the passage of the Resolution by the United Mine Workers of America (referred to in the Committee's Report) or its consideration and is not prepared to say whether he was or was not in the chair at the time the Resolution was considered or adopted.

When the first proceedings for contempt were instituted he immediately looked up the proceedings of the Convention and ascertained from them that the record showed that on the opening of the Convention at which this Resolution was considered and adopted he was in the Chair. He brought that record and presented it to the attorneys for the Buck's Stove & Range Co., when they were examining him before a Commissioner. So that the evidence which indicated that he was in the Chair was furnished by himself.

Does not know whether the stenographer of the Convention made a record of the temporary absence of the regular presiding officer or whether she simply indicated at the beginning of each session that it was opened by either the President or some one in his stead. The record in these instances shows that he was in the Chair when the session opened, but no further record is made. Has little doubt he was in the Chair, although he has no recollection of it.

There were a great many instances readily accounting for failure to remember it, if he was not in the chair or to have no knowledge of it if he were temporarily absent from the chair.

He had returned to the Convention only two days before it opened from a health resort in Missouri, where he had been quite ill. This illness followed a very serious illness which had caused him to be in the hospital a large part of the summer and most all of 1907.

Had made up from the best record he had, his monthly financial account to the organization of the United Mine Workers of America and ascertained where he had been on certain days. This was his only means of ascertaining his movements.

This indicates that on April 27, 1907, he entered a hospital at Spring Valley, Ill., where he was operated on. He was kept there

until June 1, 1907; on October 11, 1907, he entered a hospital at La Salle, Ill., a double operation being performed. 16 days later an abdominal abscess formed necessitating another exceedingly serious operation, which kept him in the hospital until Dec. 5th. Of that date he is not sure.

The record indicates he went from his home to New York on Dec. 12, having left the hospital Dec. 5, being there from Oct. 11. He returned to Indianapolis Dec. 18th and was taken ill again, leaving Indianapolis for a health resort in Missouri, getting back to Indianapolis Jan. 19. Was there one full day and part of another before the Convention opened. Was then very ill. Had not recovered from the effects of the operation and but for the fact the Convention was about to open should not have left the care of his physician at the health resort for a considerable time afterward. It was important he should be in Indianapolis from the fact that contracts between the miners and mine owners would expire March 31, 1908. These contracts fixing wages, hours and conditions of employment for nearly 400,000 men, more than 300,000 would have been without contracts on March 31st or April 1st, which would have necessitated a cessation of work in the coal mines throughout the United States, imposing hardships upon miners, to say nothing of public interests. Was about to retire from the Presidency of the United Mine Workers of America, his retirement becoming effective on March 31st. Its announcement had been made the Fall before. He felt he was no longer able to do the work as some one else might do it, and declined to be a candidate for re-election. Was anxious these contracts should be made with the mine owners before their expiration March 31st. The miners were having preliminary conferences with the mine owners in Central Western States, attempting to arrange preliminaries of contracts which had to be made
639 in January or February.

While attending one of these conferences in December he was taken ill. That conference failed to reach an agreement for its basis and indications were that a strike would come on. The consequence was that all during this convention his mind was concentrated upon the possibility of either a great strike involving the coal miners of the United States with all its hardships or the hope that before the expiration of the contract an agreement might be reached. So the affairs of the convention, except these relating to the contracts and the continuance of work, made very little impression upon his mind.

He might have been in the Chair when the Resolution was considered, without remembering. At any rate he does not remember. Did not know and there is no means of knowing such a Resolution was pending or thought of. A Resolution of that convention of the United Mine Workers of America is not read but is handed to the Secretary or to a Committee called the Committee on Distribution, appointed by the President whose duty it is to distribute the Resolutions, and by it are referred to the proper Committee.

If it is a Resolution for the Committee on Resolutions it is referred to that Committee; if a Constitutional Amendment it is re-

ferred to the Committee on Constitution; if a grievance or appeal is referred to Committee on Appeals and Grievances. The President has no means of knowing what Resolutions are introduced or what becomes of them or seeing them until they are reported back to the Convention from the Committees to whom they have been referred.

This Resolution, going through the regular process, was simply handed to the Secretary and by him to the Committee on Distribution and by that Committee referred to whatever Committee it belonged to, in this case the Committee on Resolutions. Has no doubt that when that Committee read the report they brought this Resolution back along with many others of the Convention.

Speaking from his memory of the record, it shows that the
640 Committee on Resolutions reported this particular Resolution with the recommendation that it be adopted. A delegate on the floor moved concurrence with the recommendation, the Chair entertaining the motion and asked if there were remarks. Being none he said: "All in favor of the motion say Aye and those opposed say No." There was no discussion and its absence would be another reason why it would not be impressed on the mind of the presiding officer, and if witness were presiding at the time he might have forgotten. Dare say 50 or 60 resolutions were reported at the same time by the Committee on Resolutions. At any rate that many would be referred to that one Committee; probably less than that, of that he is not sure; but a great many.

Mr. Parker offers in evidence the Toronto speech by Mr. Mitchell:

641 "MR. CHAIRMAN: I take advantage of this occasion to record, as positively as I can, my complete concurrence in the declarations of the committee. I recognize that at this time every statement made by the representatives of this Convention, and particularly by those who on next Monday must present themselves in court at Washington, is being scrutinized with the greatest care. I want the delegates to this convention, I want the people of the United States, to know that, so far as I am concerned, I shall not speak defiantly, but, let the consequence be what it will, I shall not surrender any right guaranteed to me by the Constitution of our country. I am not sure how much mental and physical suffering will be necessary to make me submit, but if I know myself, and I think I do, no amount of physical pain or mental suffering will persuade me that I have not the right to spend my money where I please, the right to speak and print whatever I choose, being responsible under the law for the abuse of that right.

"Speaking generally of the boycott, it may be, if properly and advisedly used, one of the most humane and beneficial weapons in the hands of organized labor. Used ill-advisedly, it may prove a detriment to us, but whether it be a benefit or a detriment, each man for himself must determine where is going to bestow his patronage. I deny most emphatically that any merchant or any manufacturer has a property interest in my patronage. It is mine to bestow or withhold as suits my own pleasure, and any attempt through the subtleties of the law to take from me the absolute right to spend where I please my own money—any attempt to take from the people

the right to spend where they please their own money—must be resisted at any cost and opposed to the very limit.

"Now, Mr. Chairman, this is the first time during this Convention that I have had anything to say about the proceedings in court at Washington. I have information that cognizance has been taken there of utterances by men on the floor of the Convention, and I want to go clearly on record so that no man may misunderstand my attitude, and that no man, however designing, may be able to distort my attitude. I propose in the future, as in the past, to exercise the right guaranteed me by the founders of our country: I propose—if

642 I am sent to jail—when I come from there to declare again that I shall not, for myself, purchase any product of the Buck's Stove and Range Company. I make this declaration not to tickle the ear of any man: I make it solely that I may declare publicly the conviction that is within me.

"Now, my friends, it seems to me that this whole proceeding should prove a lasting lesson to the workmen of the United States and Canada. If all the workmen had been true to themselves, if they had been true to their obligation, there would not have been a non-union product on the market for sale. The trouble with us is that we are so concerned with our own affairs that we pay little attention to the affairs of our fellow-unionists. If the workmen could realize that they are the real employers of labor; if they would in their every-day life carry into effect their open professions, it would not be long before every man and woman working for wages would be a member of a trade union. I believe the time will come when every workingman will demand and insist that the goods he buys shall be made by union labor. The merchants are only too anxious to supply the products men want to use, and the manufacturers will willingly supply the merchants with the products they demand. The difficulty has been that the union man has not insisted upon the union label or upon a union product when he went to spend his money. It is true that there are some who have consistently and persistently demanded union made goods. It is perfectly obvious by the amount of non-union goods sold that only a small portion of the union men have done their full duty.

"I want to repeat that, so far as I am concerned—let the consequence be what it may—I am going to assert and exercise while at liberty the rights guaranteed by the organic law of the country. I regard myself as a good deal of an American. I grew up with high pride in being an American. It may seem an idle sentiment, but I remember when I was a small boy, when my step-mother was so poor we could not buy bread enough to satisfy our hunger or clothes to keep us warm, and on the cold winter nights I have crept out of bed to get my father's soldier coat and wrapped it around me to keep the cold from me. I felt proud that I was an American and the son of an American soldier. I am not less proud now of being an American, but, my friends, I want to see the word
643 "Americanism" stand for all the sentiment that is symbolized by the flag of our country. I want all the liberties—not the liberties that give us the right to do things we do not want to do—I

mean the liberties that give us the right to live out our own lives and to be helpful to one another. I do not believe in that liberty enunciated by some of our courts which say that men and women must have liberty to work themselves to death. I do not believe in the liberty enunciated by Judge Tuthill, of Chicago, who declared the ten-hour law unconstitutional, because it would deny to girls and women the right to work fourteen hours a day. I do not believe in that species of liberty; but I do believe in the spirit of liberty that gives even to the most humble person on our soil the opportunity to grow and develop to the best that is in him.

"I believe that this litigation will have one good result. It will result in making our people think; it will bring home to them the necessity of working in concert. Some years ago I had the privilege of traveling through some countries in Europe, and while in Germany I visited a number of labor newspaper offices, and found in each one man who seemed not to know enough to conduct a newspaper, although he had a very important title. Upon making inquiry as to his function, we were told that his duty was to go to prison. He was hired for a small wage and his principal duty was to be sent to prison because of some infraction of the law—les majeste, or something of that kind—on the part of the editor. Surely the time will not come in America when it will be necessary for the labor organizations to employ some one to serve time in prison! There was a time, it is said, when a member of the British Parliament from Ireland, who had not served a sentence of imprisonment, was regarded as not altogether safe and faithful. Is the time going to come on our continent when the badge of faithfulness to labor must be the brand of imprisonment? Let us hope not. So far in the history of our country we have been singularly free from that sort of experience. May we not hope that the laws of our country may be so drafted and so amended and that the judiciary may so interpret these laws that no man may rightfully feel that he has not been given a 'square deal'? I am as anxious as any citizen can be that every institution connected with our government may be so conducted that no honest man may justly feel that he has
644 been denied an equal opportunity and equal rights with every other citizen."

He did not by that speech, or in that address, or at any time mean to say that he had any knowledge of the passage of the Resolution or intent thereby to aid, assist or abet an alleged boycott against the Buck's Stove & Range Co. Did not at any time make any speech or writing or publish any statement or talk on any occasion after the order of the Court was made, with the intent of effecting that boycott or aiding or assisting or abetting or encouraging.

The address delivered at the Toronto Convention was made for the purpose, not of promoting or furthering a boycott, but to express his dissent and criticism of the decisions of the Court in sentencing Gompers, Morrison and himself to prison for exercising what they regarded to be their constitutional moral and legal rights. It was not only as he thought a dignified criticism of the Court or its action, but an assertion of his right to exercise freedom of speech

and of the press as guaranteed by the Constitution and because he cannot remember now the exact words he thinks in it is found a statement that he would insist on exercising those rights until a decision to the contrary had been rendered by the United States Supreme Court. The speech itself as read in its entirety indicates the purpose for which it was delivered.

Witness felt as keenly as any man can that the indiscriminate issuance of injunctions restraining workmen from doing, saying and printing things which are said and printed by other citizens and are not questioned, was an abridgment of the rights of the citizen that invaded the liberty guaranteed the people and had done more than any one thing to affect the confidence of the people and the integrity of the Courts. Witness felt it was necessary to discuss these matters publicly, in order that a sentiment might be created of a character that would enable legislation to be enacted and reforms in judicial procedure made.

Before that speech was made he had known of the decision of the Court of Appeals which had modified the injunction. Understood that that Court had sustained the contention of the defence 645 and of workmen generally, that freedom of speech and of the press could not be enjoined. That these rights were guaranteed to the people. Had learned that from that decision the Buck's Stove & Range Co. had taken an appeal.

He was one of the representatives of Organized Labor and also engaged in an effort to secure legislation in this country bearing upon the issuance of injunctions and to that effect had taken part in a campaign antedating the issuance of the first order in this case. Other cases had come within his knowledge; his experience had not had so much to do with boycott cases but he had knowledge and had been enjoined a great many times in cases of strikes, and all these injunctions had gone so far beyond what seemed to be the law or had invaded so far the usual accepted rights of the people, that it was impossible to have obeyed them.

In an injunction issued by Justice Dayton in the Northern District of West Virginia, some five years previous, he would have violated the order if he had entered the State or spoken to an individual miner employed by the Hitchman Coal Co. He was prohibited from travelling in a street car that ran from the mines of the Company to a town some number of miles distant, or came in any way in contact with the men employed by that Company, or letting them know the Company was not paying the scale of wages paid by large competing companies.

A number of injunctions of this character were issued. One by Judge Jackson some years ago and Judge Kelly so that the members of his Union were constantly engaged in an effort to further legislation to regulate the issuance of injunctions and at every convention of the United Mine Workers of America, listened to or passed a Resolution in relation to the matter. The injunction also referred to prospective employees as well.

The address delivered by witness at Indianapolis was not delivered with intent to aid assist or abet any alleged boycott against the

646 Buck's Stove & Range Co. Witness had no such thought in his mind. Has never committed any act with such purpose in view since Dec. 23, 1907.

The speech was not made from the standpoint that something contained in it was to be treated as indicating a consciousness on the witness' part of the passage of the Resolution at the Miners' Convention on Jan. 25, 1908. At that time he had no more recollection of the passage of the Resolution than at any other time. He has no recollection of it now. It is true that the address does not disclaim any knowledge of the passage of the resolution of the Convention held one year previous. The statements in the address were for the same purpose as the address delivered at Toronto and if he had had full knowledge one year ago the address would then have represented so clearly what was intended that there would have been no two constructions to have been placed upon it.

If he had remembered or been conscious of the consideration of the Resolution and had been in the Chair at the time, the probabilities are that he should have done just what this resolution indicates he should have done. However, he has no recollection of the occurrence in January 1908 and presumes he should not be held responsible for things he might have done.

Just a month, lacking a day, before that address he had heard a sentence passed upon him for 9 months' imprisonment which he knew was unjustified by any acts he had done under circumstances that were most trying, and when he attended this Convention he was even, if possible, stronger in his convictions that no American citizen should be sentenced to imprisonment except it be done by a jury of his peers. He went there if possible stronger in his determination to do whatever lay in his power in a lawful and moral way to enthuse his fellow workers with a determination to agitate for legislation that would prevent Courts from issuing injunctions in labor disputes when they would not issue them against any of the citizens of our country and to provide a process of trying contempt

647 cases in the presence of the Court confronted by the accusers with those rights guaranteed a defendant in a contempt case that are guaranteed and given to the meanest criminal that has ever lived in our country. The thought in his mind when he made this speech and the language employed there was that if a man is so depraved that he would kill his own mother or strangle his child or outrage the chastity of a pure woman such monsters are entitled to no more consideration in the court. Or in other words that a man charged with contempt is entitled to as much protection and opportunity as is given a monster who had committed these crimes.

It was with the hope that he might impress the members of his Union with the importance of correcting what seemed to him an obvious wrong that he appealed strongly to them to continue their efforts for legislation. Any reference to the Buck's Stove and Range Co. in this speech was for the purpose of elucidating his argument.

His understanding of the injunction was and is that they were enjoined from speaking of the Buck's Stove & Range Co. or to its

employees as a means of furthering the boycott; that the purpose of the injunction was not to deny the witness the right to say "Buck's Stove & Range Co." or to say "dispute" but to restrain him from furthering the boycott. And at no time that he referred to the Company was it for the purpose of furthering the boycott.

Witness was shown his speech at the 20th Annual Convention of the United Mine Workers of America, Jan. 22, 1909, and states that it was an extemporaneous speech and the paper produced is a copy from the printed record made by his secretary, put in typewritten form. This is offered in evidence and is as follows:

648 " (From the Proceedings of the Twentieth Annual Convention of the United Mine Workers of America, Fourth Day, Morning Session, January 22, 1909.)

"MR. JOHN MITCHELL: Mr. Chairman, Ladies and Gentlemen, Fellow Miners—I am deeply sensible of the enthusiastic reception you give me to-day. It would seem, at least in a miners' convention, that a man loses none of his lustre because he is sentenced to jail. I regret that circumstances beyond my control rendered it impossible for me to be here when your convention first opened, and I regret that circumstances equally beyond my control compel me to leave here before your convention is finally adjourned. However, I thank you for according me the opportunity of speaking to you for a short time this morning. I presume you expect me to speak principally about the question of injunctions and the decision issued by and rendered by the Supreme Court for the District of Columbia. And let me say in advance there is nothing I shall say this morning that I would not have said with equal emphasis before the injunction was issued, or before we were sentenced to prison.

"I little thought a year ago when I said good-by to the delegates assembled in our annual convention that I should return in a year sentenced to prison because of some act which, after all, was the act of the United Mine Workers of America. And, growing out of this decision, comes with greater emphasis than ever the importance of legislation that will secure to the workingmen of America those rights which are exercised by and guaranteed to every other citizen of this country. It has been charged against the defendants in this case that they ask the right to violate the law, that they say they must not be required to observe the same laws that guide *either* citizens. We say that we ask no special privileges; that we ask no right that is not guaranteed by the law to every citizen. If a member of our union proposed to violate the law, no man would condemn his act more vigorously than I would. What we assert is that for what we say, for what we write and for what we think we shall be held responsible under the law; but we deny—and we shall continue to deny—the right of the court to go outside the law,
649 to go outside the constitution, to deprive us of the rights and liberties guaranteed to us by the constitution and the law.

"We say, too, that this case emphasizes the necessity of legislation that will secure to every citizen the right of trial by jury before he shall be sent to jail. Let me illustrate the importance of trial by jury

by elucidating my own case. For instance, I am convicted of two things. Of all the charges made against me I have been found guilty of two. One is that I signed and helped to circulate a pamphlet, a circular designated, "The Urgent Appeal." This urgent appeal, by the way, was a circular letter sent to all the labor unions in the country asking for money to defend a lawsuit. I am charged with having signed and circulated that appeal. The fact of the matter is, I never signed the appeal. I never saw it, I was not at the meeting where it was prepared, I knew nothing of it until I was cited to appear in court. If I had been tried before a jury it would not have been difficult to have demonstrated that I was not guilty at all of this charge brought against me. It is not material to the case that I would have signed it had I been there. It happens that I was in the hospital sick at the time and could not attend the meeting. Therefore, of course, I did not sign it. The court alleges that some six years ago I wrote a book, and in that book I declared that if a court were to issue an injunction restraining me from doing a thing I had a legal and constitutional right to do, I would violate the injunction; and in a speech made sometime afterwards in New York I declared—speaking of injunctions—that if a court enjoined me from doing that which I had a legal and constitutional and moral right to do, I would violate the injunction, I would preserve my liberty. I repeat these declarations now. I repeat them with full knowledge that I may be held responsible for what I say. I am sure you will pardon me if I say that I yield to no man in love of this country; I yield to no man in obedience to its laws. My father was an American soldier, and I would be an unworthy son of a noble father if I would yield now those priceless concepts of liberty which he and
650 men like him fought for and gave to us that we might preserve them for our descendants.

"The court says further that I presided as President of the United Mine Workers at a convention here at which a resolution was passed violating that injunction. There are no doubt in this convention hundreds of delegates who were here a year ago who knew that I had no knowledge that the resolution was to be introduced. They know I had nothing to do with its preparation, with its consideration, or with its introduction. It came before us as all other resolutions did. As chairman what was I to do? I had, it is true, three alternatives: I might have resigned the presidency of the United Mine Workers of America; I might have been cowardly and called someone else to the chair and let him accept the responsibility—ask someone else to accept the responsibility of what I dared not do myself. Or I might have accepted the last alternative—I might have stood up before you and advocated the cause of a company that was having trouble with its employes. Does the man who respects me least imagine for a moment I would become the advocate and defender of a company that was at variance with its employes? Would I stand here and fight the cause of a corporation that was trying to destroy the union in its employment? What could I do? What could any self-respecting man do? Would he not have done as I did?

"It is true that technically I was guilty of violating the injunction when I presided over the meeting that adopted this resolution; but I am no more guilty than any other man who was present in the convention at that time. Indeed, I presume that before a jury I would be considered less guilty, because I did not vote for it and every one else did. I did not vote for it because I was presiding. My friends, if I had been tried by a jury would not that circumstance have counted in my favor? If I could have said to a jury that I had returned to the convention from a hospital or from a health resort; that my mind was overburdened with worry because of the situation
 651 *toht* confronted the miners of the country at that time, do you not suppose, if you were on the jury, or if any of us were, that we would have given* consideration to those circumstances?

"I am not pleading at all, and I am not squealing. I would much prefer to discuss this question without reference to myself; I would prefer to discuss the principles involved without reference to this particular suit; but I am able, I think, to present it with greater force in this concrete manner.

"My friends, in this injunction trial, and in every trial, you are not given a trial by a jury, you are not confronted with your accusers; you are not given the rights and privileges and guarantees that are given to the ordinary criminal. Let me draw an illustration. Take a man who is charged with crime. He may have murdered his own mother, he may have strangled his own child, he may have outraged the chastity of a pure woman; and yet that monster is, under the law, entitled to the presumption of innocence until, by a jury of his peers, he is pronounced guilty. If a man of that character were to allege in court that he believed the judge to be prejudiced against him he would be given a change of venue. He could go to another judge, and, indeed, to another county, in order to secure a fair trial. That man must be confronted with his accusers. If he is without funds himself, the State will provide a lawyer for him and see that his rights and interests are defended. And finally, upon the State and upon his accusers rests the burden of proving this man guilty.

"Now, take the other case; take the man who is tried for contempt of court. Instead of being, like the murderer, presumed innocent until he is proven guilty, this man charged with contempt is cited in this language: "You, John Mitchell, are commanded to appear in the court and show cause why you should not be adjudged guilty." He is presumed to be guilty until he has proved his own innocence. He is not tried before a jury; he is tried before a judge who has been offended, or at least before an associate judge of the same court. He is not confronted with his accusers, he is not provided with lawyers to defend him; he is at the mercy
 652 of the court whose edict cannot be set aside. I ask you, gentlemen, is that our conception of American fair play and American liberty?

"I am not going to inveigh against injunctions. The injunction in itself as originally used was a beneficent and useful instrument;

it was calculated to do good but it has been used as an instrument of oppression. I say, gentlemen, that you are not secure, and no citizen is secure in his liberties as long as it is within the power of one judge to send him to prison. The right of free speech, the right of a free press, the right of free assemblage was not given to the citizens of this country to say or write or print the things that please. The poor Russian Jew—the most oppressed of all men on earth—has the right to praise the Czar, has the right to print kind things about him. The chattel slave of the South was not denied the right to say the things to his master that would please his master; he was not denied the right to print the things that pleased the man who owned him. And so it is in our law that right is not intended to give us the privilege of saying the things that please. The right of free speech, the right of a free press was intended to give the citizens the right to say the things that do not please. If it was not a guarantee of the right to criticize and denounce, what right is it at all? It is no right at all.

“Now, my friends, our critics say—and I want to refer to this particularly—that we are asking the right to say and print without responsibility, and then we cry because we are held up before the law. We ask no such privilege. Personally I would denounce as strongly as any man the claim of immunity for what you say, for what you write and for what you print. But we have laws and we have courts and we have jails and we have a legal process for punishing men who abuse the right of the freedom to write. If I say anything that slanders a man; that libels him, or that is seditious, then the proper course to pursue is to arrest me, have me indicted and tried as the law provides I shall be. Surely the process pursued is not to issue an injunction restraining me from doing those things, and then if I violate the injunction send me to jail, not for slander, not for libel, not for sediton, but for violating
653 the order of some court.

“My friends, we want relief from these conditions. We want restored to us and to all the people of our country those rights and privileges guaranteed by the laws and by the constitution. If this judge understood the labor movement, if he knew the men of labor, he would not have characterized them as the ‘throng’ and the ‘rabble.’ The labor movement has done more than any one agency in this country to raise to a higher standard the lives and the labor of all the people of our country. It has been the labor movement that has stayed the hand of the violent; it has been the labor movement that has held back the over-impetuous; it has been this much-maligned trade union movement that has given courage to the despondent and hope to the people. It has been this labor movement that has reached down its strong hand and raised up and up a great mass of men and women who were unable to help themselves. It has been this labor movement that has taken the child from the mine and the mill and the factory. It has been this labor movement that has said to avarice and greed, ‘You must not lay your strong hand upon the head of defenceless children.’ The labor movement has stood, and must always stand, for the higher things of life. It

has stood for decency, for religion, for morality, for mod-ration; it has stood for good citizenship, and to characterize these men and these women of labor as enemies to government is an injustice to them, and it is an injustice—let the consequence be what it may—that I propose to present. My voice or what I say may not reach or affect many people; but whether it reaches beyond the confines of this hall, or whether what I say is read by more than a few, I am going to protest against injustice. It was once said and it has been repeated, that 'Now that Mitchell is out of the labor movement in a manner and is down in New York associating with the more well-to-do, of course he will not see things as he used to see them when he worked for the miners' movement.'

"Let me tell you—fearing that unconsciously my environment might influence my judgment—when I located in New
654 York I determined to train myself, and I never let a week go by but that I go down to the East Side that I may see misery. I do not think that if I lived in a castle my views would change; but I am going to protect myself by seeing enough misery every week to keep me true to the cause of labor.

"And, my friends, I am going, so far as I can, to defend these rights and I am going, so far as I can, to advocate the cause of labor. I believe in this trade union movement, I believe in the United Mine Workers of America. I am not going to even take the chance of transgressing upon ground that may seem to be dangerous, so far as your affairs are concerned, but I believe that you will all understand that what I do have to say about the United Mine Workers of America is said for the one purpose of uniting in harmonious cooperation all the men of the mines. I cannot get the best myself of the old idea that this organization was somewhat mine. I got, without trying to do it, into the frame of mind that the United Mine Workers belonged to me, in so far as that I always felt it my duty to defend it from attack, just as I would defend my own child. With that explanation of how I regarded the organization as mine, I want to say that newspaper reports—and I presume they are exaggerated—would lead me to infer that you are not all in agreement. My hope is, that when you go away from Indianapolis at least you will go away in agreement. Whatever differences of opinion you may have, or whatever their causes may be, this is the place to settle them. Here in annual meeting you are the supreme power in this organization, and what a majority of you decide, let that be the policy that is followed by all.

"I remember your struggles. It is only ten or twelve years ago when there were not as many mine workers of America in some states as there are in this convention. You were few in number when I came to work for you, and you had very little money. And I say—not because of what I did, indeed perhaps in spite of what I did—that you grew stronger year after year, not only numerically stronger, but what is equally important, stronger in the real principles of trade unionism. You learned, and the men at home learned,
655 that this union was the bulwark of your liberties. The men grew to love this union, and they love it now. Let me say, my friends, that the man—I care not where he may be—

who would lay violent hands on this great organization will some day have to answer for it. Settle your differences here and then go back from whence you came and let every man do his full share in building up this union until the time comes when no man shall work in the mines who is not a member of your organization.

"I told you a year ago, and I think it will bear repeating, that I once had an ambition to be president of the United Mine Workers of America long enough to see every coal miner in America organized. My hope was that I might have stayed long enough to have turned over to my successor a thoroughly organized trade; but circumstances arose which I could not help that necessitated my retirement. I am just as hopeful now and I am just as interested now as I have ever been in my life in the welfare of this union. The thing that causes me concern is not the possibility of going to prison; that is not worrying me much. I am concerned, however, about this union. My friends, if going to prison or if staying there, would organize all the miners in America, I would say prison would be the place for me.

"Now, my friends, I think I have talked to you quite long enough. I presume that, as in other years, you have had speakers from various organizations and religious and civic bodies, and probably you are anxious to do the real work that belongs here. Therefore I shall draw my talk to a close by expressing the earnest hope that the legislation enacted by this convention, and that your own conduct in it, may reunite if necessary in indissoluble bonds the interest of every man in our trade. Let us go on as we have gone for years, building and building, building up and not tearing down. These unions are not easily built; you cannot wipe one out and erect another—at least you cannot do it in one generation. We tried it. If there is a craft on earth that has experimented with organizations it is the miners. They have had dozens of national unions in the history of mining in America, and this is the only one that has united all the forces, united all the men who believe in
656 different systems of organizations. Here in this great union have come together the men of courage and of brains who have held different ideas of systems of organizations, and by laying aside something here and something there they found a common ground on which they could stand.

"Be careful when you leave here that nothing is done to bring back the old days when miner fought miner and the operators fought them all. You know the old saying that is common among Irishmen, that England's difficulty would be Ireland's opportunity. Let me say that your difficulty will be your employers' opportunity. And, much as I respect the coal operators—and I say frankly as employers they are above the average in fairness—much as I respect them I know they would do just what you and I would do if we were in their place, take advantage of your divisions for their own profit. And that is what I would advise you to do if they were divided—and that is exactly what I did advise you to do a few years ago. When they were fighting we took advantage of them, and they will do likewise with you. So, my friends, it is no reflex-

tion upon the coal operators to say that if you divide they will unite, and they will unite at your cost.

"Now, gentlemen, I want to again thank you for the very careful attention you have given me, and to assure you that, notwithstanding the fact that I leave here by Sunday, I will be with you in spirit, and that I will watch with as much interest as any man in America the outcome of this convention. Let this be ever in the mind of each man here, that at home in their modest cottages hundreds and thousands of men and women and children have their eyes centered this way. And as you act bear in mind that to that great army of men and women and children at home you must give an accounting."

657 Cross-examination.

By Mr. DAVENPORT:

He is 42 years old, born at Braidwood, Ill., a coal miner by trade. He began that occupation at 12, joined the local assembly of the Knights of Labor when 16 at Braceville, Ill.

The United Mine Workers of America was formed, an independent organization in 1890, composed of various local unions. At that time was living in Colorado. First joined a local Union of United Mine workers of America in 1891, and has continued to be a member of the local Union substantially ever since, wherever there was a local Union to which he could belong.

He followed his trade part of the time in Illinois, Colorado and New Mexico. Subsequently became an officer of the United Mine Workers, held many offices outside of the local office which he cannot remember.

In 1896 became a member of Executive Board of District 12 of United Mine Workers of America in the Illinois Division. Preceding that was Sec. Treas. of the Northern Illinois Sub-district. In 1898 became the Vice President of the International Union of the United Mine Workers of America.

Succeeded to the Presidency in the Fall of 1896. At that time its membership was approximately 33000. Ceased to be President March 31, 1908, its membership was then 300,000 divided into approximately 3700 locals located in all the bituminous coal producing states—Penn., Ohio, Indiana, Illinois, Kentucky, Tennessee, Michigan, Missouri, Kansas, Arkansas, Texas, Washington, Wyoming, W. Virginia and Maryland.

When President he had the loyal support of the membership generally and so far as he knows their confidence and good will.

Was an officer in the National Civic Federation his connection commencing in 1900. When President of the United Mine Workers of America conducted the anthracite coal strike in Penn. His organization included anthracite as well as bituminous coal workers.

658 Became an officer of the Civic Federation in Fall of 1900.

The first anthracite coal strike was in 1900 and the second in 1902, which lasted 5½ months from about the middle of April until

about the first of October. Wrote a book after the coal strike was terminated relating to labor subjects. Treated on injunctions.

"Q. In December, 1906, at a public meeting of the National Civic Federation held in the City of New York, did you make a Speech?"

"MR. PARKER: I object whether he made a speech or not. This is long before this order was made.

(Objection overruled; exception noted.)

Has no recollection of what he said.

Mr. Davenport reads to the witness the following:

"Do you — that in labor disputes, when the proposition to arbitrate is made, very often—indeed almost generally—the workingmen will make the reservation that the question to be arbitrated shall not be submitted to a Federal Judge? I do not share fully in these apprehensions, but the very fact that workingmen do express a fear of the impartiality of the federal judiciary is in itself a matter of grave concern, not alone to those who have suffered from the injunction, but to the entire people of this country. Men do not lose confidence without cause, or at least without the belief that they have cause. So many injunctions have been issued, so many laboring men have been incarcerated because of the violation or alleged violation of these injunctions—not because of the commission of crime, not because they have violated any law of the land, but because they have insisted upon doing those things which they have a legal and a Constitutional right to do."

659 Mr. Davenport reads to witness the following:

"Do you know that in labor disputes, when the proposition to arbitrate is made, very often—indeed almost generally—the workingmen will make the reservation that the question to be arbitrated shall not be submitted to a federal judge? I do not share fully in these apprehensions, but the very fact that workingmen do express a fear of the impartiality of the federal judiciary is in itself a matter of grave concern, not alone to those who have suffered from the injunction, but to the entire people of this country. Men do not lose confidence without cause, or at least without the belief that they have cause. So many injunctions have been issued, so many laboring men have been incarcerated because of the violation or alleged violation of these injunctions—not because of the commission of crime, not because they have violated any law of the land, but because they have insisted upon doing those things which they have a legal and a constitutional right to do.

"I wish to say for myself—and I yield to no man living in loyalty to this country—that if a judge were to enjoin me from doing something that I had a——"

MR. PARKER (interposing): I interrupt you, Mr. Davenport, and I object now to the reading and to the question on the ground that whatever there is there antedates the issuance of this injunction order, and it has no pertinency or relevancy or materiality in this proceeding.

THE COURT: Suppose it should be determined that the defendant was conscious of submitting to the Indianapolis convention the reso-

lution which has been read in evidence, would it not then be appropriate to ascertain whether the condition of his mind at the time of that act was such as to indicate a wilful violation of the order of injunction, or not?

Mr. PARKER: I should contend not, your Honor; but, first, there is no evidence as yet in this case, and I take it there will be none, from which the inference of fact can be drawn that he states an untruth here when he says he was not conscious of the passage of that resolution.

Mr. DAVENPORT: He said he did not remember.

Mr. PARKER: He has no conscious recollection of it. I know what the evidence was before, and I think it will not be possible to draw that inference.

Mr. DAVENPORT: Are you constantly bringing in this evidence he gave before and telling it to this tribunal and then preventing us from showing what he did testify to?

Mr. PARKER: I did make a comment here now which referred to evidence before.

Mr. DAVENPORT: You say you know what it was before.

Mr. PARKER: I will withdraw it and say there is nothing here now in this case.

Mr. DARLINGTON: I desire to enter an objection to the remark of counsel for the respondent to the effect this witness has testified he was not conscious at the time this resolution was passed of what it was. He has not so stated, and I do not want any confusion of the record about it. I object to that statement of counsel. If he can show this witness was not conscious of the resolution at the time it was adopted and did not know all about it, I submit that should be done in some more regular channel than by mere statement of counsel.

Mr. PARKER: I certainly intended to ask that question, and I certainly did.

Did you not so understand me to ask that question, Mr. Mitchell?

The WITNESS: I understood that question was asked.

By Mr. DAVENPORT:

Q. What is that? A. As to whether I was conscious of the resolution that was considered in the January 1908 convention of the miners' union, and my answer, as I recall it, was that I was not conscious of the consideration of the resolution.

By Mr. DARLINGTON:

Q. At the time the resolution was adopted? A. Or at any other time, now or then, from any recollection of it. I am conscious here now from the record of the proceedings.

Q. That is not the question. The question was whether the witness states under his oath that at the time this resolution was adopted he was not conscious it was being done or what its purpose was at that time? A. My answer is, as I think I made it, that I have no recollection of it occurring at all, and if I were conscious of the consideration at the time, I would have remembered it, because I have not forgotten incidents now that I had in my mind at that time.

Mr. DAVENPORT: I will recur to where I was reading. Where did I leave off, Mr. Stenographer?

Mr. PARKER: You left off at the place where I objected. The Court has not disposed of the matter yet.

The COURT: I have been wondering whether you were talking to one another about the subject, or addressing the court.

Mr. PARKER: It may be open to that criticism.

The COURT: Clearly the element of wilfulness is important and perhaps vital to the ascertainment of the guilt of the defendant as to the charges made against him on this special occasion. I think if it can be shown that at the time there was an act which amounted to a violation of the injunction his mind held an established conviction that he would violate injunctions if they interfered with his own estimate of what his rights were, any evidence which would show that established condition of mind would tend to prove the act was wilful. A good way to show that the mind holds a certain conviction is to establish that it was entertained prior to the time in question.

The objection is overruled.

Mr. PARKER: I except.

The ground of the exception stated was that the statement preceded the temporary injunction.

Mr. DAVENPORT (reading): "I wish to say for myself—and I yield to no man living in loyalty to this country—that if a judge were to enjoin me from doing something that I had a legal, a constitutional, and a moral right to do, I should violate the injunction. I shall, as one American, preserve my liberty, and the liberties of the people even against usurpation of the federal judiciary, and in doing this I shall feel that I am best serving the interests of my country."

"Did you make that statement?"

662 He cannot remember whether it was made in that language or not. Has no doubt that he made that statement substantially as it is read. Says this without doing it from memory or recollection. "Q. I will ask you whether you can recall now ever having made this statement:

"Moreover when an injunction—whether temporary or permanent, forbids the doing of a thing which is lawful, I believe that it is the duty of all patriotic and law-abiding citizens, to resist, or at least disregard the injunction. It is better that half the workingmen of the country remain constantly in jail than that trial by jury and other inalienable and constitutional rights of the citizens of the United States be abridged, impaired, or nullified by injunctions of the courts."

Witness inquired where he was supposed to have made that statement and was informed that it was supposed to be in his talk on organized labor, published in 1903, to which he responded, "he supposes that is a fact then. Can not remember it, does not recall any of it. The correctness of the question was thereupon admitted by stipulation between counsel. Does not recall whether he attended any meetings of the Executive Council during 1907. Re-

calls attending its meeting at Norfolk. The usual meeting is held in the fall not necessarily in September.

Recalls service in Washington of the papers in the original Buck's Stove and Range case. Does not recall that all the Executive Council were there. Remembers going down to Norfolk after that and they were together several days. Believes that each of them had served on them a copy of the complaint in the original Buck's Stove & Range suit. Was a matter of considerable interest to the witness. They were together then perhaps a week.

The meeting was held to transact its regular business and dispose of any matters that might come before it.

663 Performed the same functions that the usual meetings perform preceding the Conventions of the American Federation of Labor. Took no part in the preparation of any report of the Executive Council.

The following Convention of the American Federation of Labor was to be held in Norfolk in Nov. 1907. It is usual for either the President or Secretary or other representatives of the Executive Council to visit the City in which the Convention is held, in advance of the Convention, to make such arrangements as are necessary to secure hotels, halls, etc. The Executive Council were to go to Norfolk to transact this and other business.

The American Federation of Labor had an Exhibit down there. Does not recall that the matter of the suit and its defence was talked over by him. Knows that he was represented in the defense of the suit by the firm of Ralston & Siddons. Did not personally authorize them to conduct the defense. They were employed by the officers of the American Federation of Labor. Does not recall that he specifically consented to it. His recollection is that the officers of the American Federation of Labor were authorized to employ and did employ counsel to defend all.

He entered the hospital at La Salle Oct. 11, 1907. Had been sick all summer. Had been in the hospital first April 7, 1907, and left there June 1st, 1907, and between that time and Oct. 11th, when he reentered the hospital, was in poor health.

Can not recall seeing Mr. Gompers after he left the conference or meeting of the Executive Council at Norfolk. Or having had any correspondence with him about the suit then pending.

Had been chosen a delegate by his Union to the Norfolk Convention but did not attend. Was in New York December 17, 1907 attending a meeting of the National Civic Federation. His recollection is that he made an address at that time. Thinks Mr. Gompers did not preside over that session. Saw him there.

Reached Indianapolis December 18th. Data as to dates 664 was made up from copies of monthly financial statements.

Cannot recall whether he arrived at Indianapolis the 18th or was en route on the 18th.

Thinks he saw something in the paper about Judge Gould's granting an injunction when en route to Indianapolis, but is not sure. Believes he did not talk with Mr. Gompers about it before leaving for Indianapolis.

The Civic Federation conference was held at the Park Ave. hotel he believes. Did not stop there. Does not know if Mr. Gompers stopped there. Has no recollection of having a conference with him in regard to the matter of the decision of Justice Gould in the Buck's Stove and Range case.

During the fall of 1907, the Federationist was delivered at witness' office in Indianapolis. He has no recollection of receiving them. Did not in that fall read the various editorial statements of Mr. Gompers. Was ill nearly all the time.

When he reached Indianapolis he went immediately to a hotel to confer with the miners and mine owners and the second day of the conference was taken violently ill in the morning. An account of this was published in the Indianapolis papers at the time of his return. His recollection is clear as to forenoon, and the time he was taken ill and that it was the forenoon of the second day. He was very seriously ill.

He went West December 27th to Excelsior Springs, Mo. Left there going to Indianapolis. Got back to Indianapolis Jan. 19th. Was living at Spring Valley Ill., 125 miles from Springfield. Came back to Indianapolis on the 19th. The Convention opened on the 21st. At the opening he made a report published in the proceedings prepared while he was at Excelsior Springs—at the hotel. Prepared the report the best way he could.

W. B. Wilson was Sec. Treas. of the United Mine Workers of America at the time. Has no doubt that the paper exhibited to him (United Mine Workers' Journal Jan. 25, 1908) contains his 665 report. Prepared it while at Excelsior Springs. Is not prepared to say whether it was as well done as it would have been were the circumstances different. Was not conscious at the time of any mental weakness or lack of memory. Was conscious of being ill, tired and weak.

Was not in error in stating that he furnished Mr. Davenport on a former occasion with an excerpt from the proceedings showing that he presided in the convention. Was not at the Executive Committee meeting January, 1908, when the Urgent Appeal was decided upon.

Recalls sending a telegram Jan. 22, 1908, to Samuel Gompers. Does not recall the language, perhaps it was prepared by his Secretary. His recollection is that on January 22, 1908, he was at Indianapolis and the Council were in conference in Washington. Recollects the opening of the Convention and that he presided and submitted his report to it. Read the principal parts, leaving out the statistics, etc., and thinks there was appended to it the injunction bills. He would not read them. They were submitted with the report for the information of the convention. This effort called for very considerable physical strength and he was able on Jan. 21, 1908, to do it. The effort of submitting it further impaired his strength, and for several days following the opening day on which he made his report, as he recollects he was not as strong as then. He could not have been very strong. It would have been impossible for any man to have been who had undergone three abdominal operations,

leaving the hospital afterwards in December and the Convention being held in January.

Thinks the Convention held morning and afternoon sessions, although there may have been some evening sessions. Does not recall they held three. Can recall very well repeated absences from the Chair as presiding officer during the session. Made it a rule to open each session, that he attended to himself, but having opened the session and business being started in a formal way it was not
666 unusual for some one to relieve him, that he might rest. Did not perform the duties as presiding officer as he would in other years. Except having been assisted by others during the sessions he attended to the regular duties of presiding officer, appointing the committees and when in the chair performed the duties of Chairman. He opened the sessions every day. Would not question the record when it stated that he made some remark or ruling. Would not question he was there when the record stated he made some remark or ruling on a question of order.

If the record shows President Mitchell was in the Chair then he agrees he was, but does not propose to agree that whenever it is found "the Chairman made a ruling" it was President Mitchell. Whenever it says President Mitchell made a ruling, he was in the Chair.

There were between a thousand and 1200 members in the Convention. The Hall (Thompson's Hall) is built with a balcony all around it, that is one end and two sides and the delegates would be seated on either side bringing them closer to the stage than they would be if in the body of the hall.

Has a Committee on Distribution, so-called in the organization. Believes the Sec. Treas. was a member of the Committee on Distribution. Witness appointed the Committee, the others as well as Mr. Wilson. There is not a regular day for putting the Resolutions in. There is a limit to the time they may be put in, usually a week after the opening of the Convention. The rule is that the Resolutions are printed in the proceedings when they come back from the Committee to which they have been referred. There are occasions when a matter of more than usual importance comes before the Convention they may be ordered printed before referred. That is the attention of the Convention may be called by a delegate to the fact that he has a resolution of unusual importance. He would ask to have it printed for distribution before the Committee has acted. Does not think
667 resolutions are printed and distributed among the members if reported on the day they are introduced with the exception of the unusual cases referred to. Resolutions are not printed prior to reference to the Committee having charge of them. Resolutions date from the time they were handed to the Committee and by that Committee referred to the Committee having charge of them. This would explain their record.

Has no recollection of Resolution 73 at all. Is quite clear he had no knowledge of it at the time. Witness has no doubt his attention was called to the report of the 5th day, morning session when in the summer of 1908 he was summoned to answer for contempt here.

In this Convention of the United Mine Workers of America a

large number of Resolutions were introduced; not in the session as stated. His understanding was that it was during the session this committee would report a large number of Resolutions, but not at one time. Perhaps they would report for a whole forenoon or afternoon.

Mr. Davenport read (page 1271) from the record of the proceedings of the United Mine Workers of America, Wilson Exhibit No. 1, under the heading Fifth Day Morning Session: "The Convention was called to order at 9 A. M., Saturday, January 25th, President Mitchell in the Chair."

(Here follows a large amount of miscellaneous business, after which the following appears:)

"Resolution No. 20 (Sec. 1).

"Be it resolved, That the national body of U. M. W. of A. petition the United States Congress to pass a law providing for the appointment of at least three government inspectors of mines.

"The Committee recommended non-concurrence in the resolution.

"On motion of Delegate Snodgrass the recommendation of the committee was concurred in.

"The committee recommended that Resolution No. 69 be referred to District 11.

"Delegate GREEN (JOHN): I move that we concur in the report of the committee. (Seconded.)

"The question was discussed briefly by Delegates Stitt and Ryan (W. D.).

"The motion to concur in the recommendation of the committee was carried.

"The committee recommended that Resolution No. 75 be referred to District No. 6.

"On motion, the recommendation of the committee was concurred in.

"The committee recommended that Resolution No. 78 be referred to the Scale Committee.

"Delegate Holt moved that the recommendation of the committee be not concurred in.

"President MITCHELL: The motion is not in order. A motion to non-concur in the report of a committee cannot be entertained. A negative motion is not in order. The effect of defeating a motion to concur is the same as passing a motion to non-concur.

"On motion of Delegate Dwyer the recommendation of the committee was concurred in.

"Resolution No. 71.

"To the Senate and House of Representatives of the Congress of the United States:

"Whereas, Taxation without representation is tyranny; and,

669 "Whereas, Women pay, in every state in This Republic, a rapidly increasing amount of taxes; therefore, be it

"Resolved, That justice demands that their present political disability be removed and that they be enfranchised upon the same terms as the men in the states in which they live; and,

"Resolved, That the undersigned, on behalf of the United Mine Workers of America, in annual convention assembled at Indianapolis, Ind., on January 21, 1908, and representing fully 350,000 mine workers, respectfully asks for the prompt passage by your honorable body of a sixteenth amendment to the Federal Constitution, to be submitted to the legislatures of the several states for ratification, prohibiting the disfranchisement of United States citizens on account of sex; and

"Resolved, That the Secretary of this convention is hereby instructed to forward this resolution to the President of the United States and to each member of Congress and of the United States Senate.

"JOHN MITCHELL,

"President United Mine Workers of America.

"January 21, 1908.

"The Committee recommended concurrence in the resolution

"On motion of Delegate McGrath (District 25) the recommendation of the committee was concurred in, the vote being unanimous.

"The committee recommended that Resolution No. 72 be referred to the Committee on Scale.

"On motion of Delegate Vickers the recommendation of the committee was concurred in.

"Resolution No. 73.

670 "Whereas, The Buck Stove and Range Company, of St. Louis, Mo., have taken legal steps to prevent organized labor in general, and the officers and Executive Committee of the A. F. of L., in particular, from advertising the above named firm as being on the 'unfair,' or 'we don't patronize list,' and

"Whereas, By the issue of such an injunction or restraining order as prayed for by above named firm, organized labor will be deprived of one of its most effective weapons, and

"Whereas, J. W. Van Cleave, the president of above named firm, also president of the National Manufacturers' Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"Resolved, That the U. M. W. of A., in Nineteenth Annual Convention assembled, place the Buck stoves and ranges on the unfair

list, and any member of the U. M. W. of A. purchasing a stove of above make be fined \$5.00, and failing to pay same be expelled from the organization.

"HARVEY STROUD.
"FRANK SCHAEFER.

"Indorsed by Local Union 755, Staunton, Ill.

"The committee recommended concurrence in the resolution.

"On motion of Delegate Walker (J. H.) the recommendation of the committee was concurred in, the vote being unanimous.

"The committee recommended that Resolution No. 74 be referred to the Committee on Constitution, as it refers to a question of law, and properly belongs to that committee.

671 "On motion of Delegate Stroud (District 12) the recommendation of the committee was concurred in.

"The committee recommended that Resolution No. 85 be referred to the Committee on Constitution.

"On motion of Delegate Magdelene (District 5) the recommendation of the committee was concurred in.

"The committee recommended that Resolution No. 87 be referred to the Committee on Constitution.

"On motion of Delegate Dunn the recommendation of the committee was concurred in.

"Resolution No. 51.

"Whereas, We, the miners of Texas, are working under conditions that do not exist in any other part of our district, such as pushing and brushing, and when we approach our operators on these matters we are told that we have signed our agreement and we cannot ask for anything that will add to the cost of production: therefore, be it

"Resolved, That the miners of Texas be granted the right of adjusting their own internal grievances with the operators of Texas in a wage scale conference at Fort Worth.

"(Signed)

"J. R. EDWARDS,

"JOHN LLOYD,

"Local No. 2538, Thurber, Tex.

"The committee recommended that the resolution be referred to the Southwest Interstate Convention.

"On motion of Delegate Burch the recommendation of the committee was concurred in.

"The committee recommended that Resolution No. 96 be referred to the International Executive Board.

672 "On motion of Delegate Gildroy the recommendation of the committee was concurred in.

"Delegate Fairley, chairman of the Committee on Resolutions, announced the completion of the partial report.

"Delegate FARRINGTON (District 12): Since the convention has been in session the representatives of a firm manufacturing cartridge shells have been circulating printed matter concerning it among the

delegates. I notice that the label of the International Typographical Union is conspicuous by its absence.

"I therefore move that the proper representative of this International organization be instructed to notify the manufacturers of the cartridge shell that before we can give it our approbation or use our influence to have it introduced into the mines they must give us a union made cartridge shell.

"The motion was seconded and carried, the vote being unanimous."

"Delegate PATTERSON (District 18): It is understood that W. D. Haywood is to be in the city tomorrow evening to speak at a meeting. I move that a committee be appointed to wait upon W. D. Haywood and ask him to address this convention.

(Seconded and carried.)

"President Mitchell announced the following committee to wait on Mr. Haywood; E. S. McCullough, Michigan; Frank J. Hayes, Illinois; John Moss, District 21.

"A motion was made and seconded that the rules be suspended and the convention adjourned until 9 a. m., Monday.

"Delegate FARRINGTON (District 12): The Committee on Officers' Reports will be ready to make a report this afternoon.

673 "Delegate HOLT: I move as an amendment that the rules be suspended and that we adjourn to 1:30 this afternoon.

"The motion was seconded and carried, and the convention adjourned to 1:30 p. m."

Witness has no doubt that he was presiding when, as appears on page 258 of said Exhibit, the following occurs:

"President MITCHELL: The motion is not in order. A motion to non-concur in the report of a Committee cannot be entertained. A negative motion is not in order. The effect of defeating a motion to concur is the same as passing a motion to non-concur."

It appearing on page 261 of said Exhibit that the witness announced the appointment of a Committee to wait on Mr. Haywood, the witness stated that he could not remember the circumstances about the record or what it was; nor would the record that he appointed the Committee necessarily indicate that he was presiding. He does not know but thinks it likely he was presiding when Delegate Patterson announced that W. D. Heywood was to be in the City the following evening and moved to appoint a Committee to wait upon him and ask him to address the Convention. The fact that President Mitchell appointed the Committee would not prove conclusively that he was presiding. If he were resting and some one else presided temporarily, the President would appoint the Committee. The temporary presiding officer would not. Wit-

674 ness does not know that he was presiding. Says likely he was. He cannot remember. Recollects Resolution 71 in regard to Woman's Suffrage, but was not necessarily presiding. This fact does not bring to his mind as to whether he was there. He cannot recall. Cannot remember whether he was presiding when resolution 73 placing the Buck's Stove and Range Co. on the "un-

fair" list was reported, moved and adopted unanimously. Has no recollection of the circumstances at all.

In his testimony in the case before said he had no doubt he was presiding because the record of the proceedings showed that he opened the Convention, but at no point in that forenoon or afternoon session whichever time it may have been did it indicate that he left the Chair or that he called some one else to preside. Finds that at no time was a record made of his temporary absence from the Chair and the calling of some one else to preside. This fact raises some doubt in his mind as to whether he was in the Chair at the time and as to the wisdom of the statement he made in the last case. He should have looked up the record fully to find out whether a note was made in the proceedings as to his temporary absence from the Chair. Has serious doubts about being in the Chair and is willing to say it is likely he was in the Chair. He is saying that when he might with perfect propriety and with absolute truth leave the question absolutely in doubt. Has not made any efforts to ascertain whether he was presiding and put the Resolution. Has looked at the record of the prior proceedings. Knows he was present at the Convention at Indianapolis and it was unnecessary to ascertain that in any other way than his own knowledge. Did take steps to ascertain whether or not he was present and presiding and introduced himself in the hearing of the last case evidence from the Convention proceedings, indicating that he was present and opened the Convention that morning, so that he not only made an effort to ascertain, but did what witnesses ordinarily do not do, furnish the evidence himself to the prosecution upon which the charge against him was made.

675 From recollection there were between a thousand and 1300 delegates. There may have been less. Is speaking not with regard to that convention but because of his knowledge of all.

Knows W. D. Ryan who at that time lived at Springfield, Ill. and as a result of the then preceding election had been chosen Sec.-Treas. to succeed Mr. Wilson who with witness went out of office March 31st, 1908. Thomas L. Lewis succeeded witness at President, and Ryan succeeded Wilson as Sec.-Treas.

Knew Delegate J. H. Walker, president of the District comprising Illinois,—district No. 12. He had been a candidate for international President in opposition to Lewis and therefore had not been a candidate for re-election as President of the local organization, but likely was filling the term about to expire. Believes he was not in the summer and October of 1908. President of District No. 12. Knew him well. Knew Wilson, McCracken and Garvin of Committee to assign resolutions. Knew well only Wilson its Sec. Treas. Knew all the remaining members some only casually. Cannot recall the appointment of members of the Committee, but if they are in the record they were so appointed. Mrs. Mary Burke East was stenographer of the Convention and had been for many years, and of the A. F. of L. convention for some years. Resides at Indianapolis, Indiana, was not personally acquainted with Harry Stroud and Frank Schaefer, whose names were endorsed on the Resolution. Does not know if they were delegates who attended the convention.

Did not inquire of any of those people to ascertain if he was presiding or put the Resolution. So far as he knows they are credible people. It never occurred to him to inquire of them and if it had he should have doubted they could give any information. Does not know whether they were delegates to the Convention or not. Has never seen the depositions given for this purpose on the former trial.

Never looked at them and never saw them. They were never
676 furnished to witness. Had not taken the means of examining a book indicated to witness.

Knows W. D. Ryan very well. He has been connected with the Union many years. Cannot say whether they worked together in the same mine years ago. He is considerably older than witness. Have heard him use the expression that they were "graduates of the same town." Thinks he has acted as Secretary of the Resolution Committee during the time witness was President. The Secretary in reporting these Resolutions usually stood on a platform when witness was presiding. The presiding officer would be within 4 to 6 feet of the member of the Committee reporting to the Convention. Ryan has a very clear and loud voice. Does not know if he was assigned by the Committee to make the reports for that reason. Knows he frequently did make reports. Knows he is accustomed to keeping records and skilled in the use of the pen and that being true he was selected as Secretary of the Committee and the Secretary usually reads the reports in a labor convention. The usual method was for the Secretary of the Committee having read the Resolution under consideration to move the adoption of the report and the Chair would submit the question, if there were no remarks, and announce the result.

There was another custom in the Conventions which this record indicates, the Resolution being reported by the Committee and its adoption approved either by the Committee itself or by a delegate from the floor, and there being no remarks the Chair would say "There being no discussion and no opposition the Resolution is declared to be adopted."

If Mr. Ryan reported it and stood in his place within six feet of where witness was sitting it would have been read loud enough for him to have heard it. Having been read, under the usual custom, if there was a motion that the recommendation of the Committee be concurred in, witness would call for remarks. If there were no remarks made or express vote taken it would be declared carried unanimously. If witness was present and presiding he
677 presumes followed that course with that Resolution.

In this Convention a motion to give the Chair the privilege to declare a motion carried to which there was no opposition had been defeated and therefore it was evident that the Chair was required to actually call for the vote and that being the case witness has no doubt whoever was in the Chair observed those instructions from the Convention, so that on this afternoon he assumes that the Chair did not pursue the policy that had been followed in other Conventions of declaring a motion carried upon which no vote had been taken provided there was no discussion to it.

It would seem to have been the case for Resolution 73 to be handed to the Committee on Distribution and by it referred on that day (third day of the session) and printed in the proceedings of that day. If it appears there that would be correct.

The Convention had a Committee known as the Committee to Distribute Proceedings which — received from the printer, as any proceedings are delivered and distributed them in the morning or evening to the delegates. The proceedings might not be printed for two days later, but might be delivered in two days after the matter was handed the printer. At that time W. B. Wilson was Secretary and had charge of this business.

There is read to the witness from the minutes page 406, testimony of W. B. Wilson, particularly relating to the functions of the Committee on distribution. Witness testified he did not see any reason to question the correctness of Wilson's statement. But matters of that sort received no attention from him in any Convention and in this when he was ill and in part incapacitated he would have given even less attention to the details of Convention work. In this respect Wilson's recollection of the matter would be more apt to be correct than witness'.

The United Mine Workers of America publish a Journal called the United Mine Workers' Journal. Believes it published a condensed report while the Convention was in session of its proceedings as well as the report of the officers. Thinks it did not publish the exact document or the contents of the document subsequently issued as proceedings. Witness' recollection and information is that the book sent out contains a verbatim report of the Convention proceedings, but the Journal contains simply the Resolutions and action upon them excluding the debates. Believes one is verbatim and the other the daily proceedings.

The United Mine Workers' Journal speaking from recollection circulated about 8000 copies to subscribers. Resolution 73 was published therein and in addition in the regular book of proceedings copy of which was sent to each Union delegate and such other persons as might want them, witness presumes is true. Had no knowledge that it was published in the United Mine Workers' Journal or proceedings until the suit was instituted here and it was brought to his attention. At that time was President of the United Mine Workers of America and appointed the Editor of the Journal, some six or seven years prior to the date upon which this Convention was held.

Was a member of the Executive Board that published the United Mine Workers Journal, which was delivered to witness' office. He saw and read it but not during the period—was in the hospital, would not read the journal during the period the Convention was in session or any other publication, perhaps looked at it casually only. Has no recollection of reading it afterwards. Has no doubt that the number of the Journal containing the editorial accompanying the Urgent Appeal and the statement made by the Counsel for the Buck's Stove & Range Co. was circulated to the subscribers of the paper. So far as he knows was not furnished to any one except subscribers. The

idea of getting out a Convention number was that the subscribers might have the information it contained.

Witness had no knowledge of the publication of the article just read. Is one of the Vice Presidents of the American Federation of Labor and a member of its Executive Council. His organization was one of the constituent members. Sometimes not always he reads the Federationist. Does not recall that the petition of the Buck's Stove & Range Co. in contempt and to compel him and others to show cause was published by Mr. Gompers in the Federationist. Does not recall having read the number referred to. Might have done so, but it made no impression on witness' memory. Would not be a matter of particular interest inasmuch as he was served with a copy of the petition himself which he read.

Does not recall paragraph 18 found on page 684 of the September 1908 Federationist as being published in it. Recalls it in the petition his attorneys made and he swore to that. Has no recollection at all with regard to presiding at the Convention at which Resolution 73 was put. Has no recollection whatever of the matter. Knows that when the Convention was in Session he was suffering and under very great disadvantage owing to his physical illness and mental worry. It would have been possible for him to have been in the Chair and the Secretary reading 4 to 6 feet from him and him not to realize the import of the report he was making.

Aside from very serious physical illness he was worried because of the condition in which his organization was placed. Contracts under which 400,000 *thousand* members were working were about to expire. His highest possible ambition was to have the renewal of these contracts in order that a great strike in coal mining might not occur, in America, and he might retire from the Presidency as he was about to do and leave the organization he had taken a great deal of pride in building up in the very best possible condition.

So his worry and his whole thought and mind so far as it was possible to concentrate them were concentrated on that one question: How he was going to work out the solution of the difficulties in which the members of the organization were placed and save the people of our country from hardships inevitably following the cessation of coal mining. He might have been so absorbed in these more serious matters that he would not have realized the import of the Resolution, even though he heard it read. If he was in the Chair that likely was the situation. Does not know whether he was temporarily absent or not. Does know he was absent from the Chair temporarily more times than in other Conventions, when he was in better physical health, with less mental worry.

Cannot say he was unconscious of it. Might have been in the Chair and not been conscious of the import of the Resolution. Cannot remember about it.

If the Court concludes he was presiding at the Convention when that Resolution was under consideration and that he put it to a vote and declared it to have been adopted, then he should ask the Court to believe that he did not understand the import of the Resolution or the action of the Convention.

Q. And that that was the reason of your action?

A. No. As I have no knowledge of it, I cannot say that.

Spent a day or two at the Convention of the United Mine Workers of America January, 1909. Cannot remember if he had been in Washington previous to that time. Had been adjudged guilty of contempt Dec. 23, 1908.

Is quite sure he attended the Executive Council meeting in January 1909 set forth in the March Federationist. Says this without having a distinct recollection. Sure Mr. Gompers made a report at that meeting. Does not remember part of Mr. Gompers's report, page 270, March, 1909, Federationist directing attention to answers which witness, Morrison and himself were preparing and editorials which he might write. Cannot imagine it refers to answers at all because that was following sentence of the Court. Prepared with Gompers editorial in February 1909 Federationist, page 132 under heading: "Decision Reviewed." Read it over carefully at the time. Wrote part of it and part was written by Gompers and witness believes by Morrison.

Thinks that paragraph in February 1909 Federationist at bottom of page 142 and top of page 143, commencing with "Mr. Mitchell is charged with and admits having presided at a Convention of the United Mine Workers of America, etc.," is largely his own handwriting.

681 When he says in the editorial something to the effect that he admits presiding over the deliberations of the Convention, that has reference to the admission made in the proceedings of the first contempt case in which he then stated he did not doubt he presided, basing his statement upon the printed proceedings and the statement in the editorial was to be understood in that light.

The address made at the 1909 Convention of the United Mine Workers of America was not prepared in advance, not written. Was extemporaneous. To the question whether it was impromptu, he answered that he went to Indianapolis for the purpose of making an address to the Convention largely to discuss the subject of judicial procedure in injunction cases. Made no notes and had no manuscript so what he said was to that extent extemporaneous on the general subject of injunctions and the case in which he was then involved.

A part of the address was read to the witness as follows:

682 "The court says further that I presided as president of the United Mine Workers at a convention here at which a resolution was passed violating that injunction. There are no doubt in this convention hundreds of delegates who were here a year ago who know that I had no knowledge that the resolution was to be introduced. They know I had nothing to do with its preparation, with its consideration, or with its introduction. It came before us as all other resolutions did. As chairman what was I to do? I had, it is true, three alternatives: I might have resigned the presidency of the United Mine Workers of America; I might have been cowardly and called someone else to the chair and let him accept the responsibility—ask someone else to accept the responsibility of

what I dared not do myself. Or I might have accepted the last alternative—I might have stood up before you and advocated the cause of a company that was having trouble with its employees. Does the man who respects me least imagine for a moment I would become the advocate and defender of a company that was at variance with its employees? Would I stand here and fight the cause of a corporation that was trying to destroy the union in its employment? What could I do? What could any self-respecting man do? Would he not have done as I did?

"It is true that technically I was guilty of violating the injunction when I presided over the meeting that adopted this resolution: but I am no more guilty than any other man who was present in the convention at that time."

"Indeed, I presume that before a jury I would be considered less guilty, because I did not vote for it, and every one else did. I did not vote for it because I was presiding. My friends, if I had been tried by a jury, would not that circumstance have counted in my favor? If I could have said to a jury that I had returned to the convention from a hospital or from a health resort; that my mind was over-burdened with worry because of the situation that confronted the miners of the country at that time, do you not suppose if you were on the jury, or if any of us were, that we would have given consideration to those circumstances?"

Asked to compare the two speeches, and the identity of phraseology between them and say whether the latter was unpremeditated in its terms and phrases, the witness answered that he should not say it was unpremeditated in its language and phrases because those are terms the witness has applied for years in discussing the subject of judicial injunctions. For all of 15 years he has constantly sought to create a sentiment in favor of jury trials in contempt cases and his argument was in connection with expressions made hundreds and hundreds of times. Necessarily they were similar to expressions used in the employment of editorials appearing in the Federationist. Witness filed an answer in the original contempt proceeding, and requested a jury trial: was present in court when his counsel withdrew that request; did not then go before his followers and attack the court because it proceeded to try the cause; was seeking legislation that would secure trial by jury in contempt cases.

The witness' attention is invited to the identity of expression in the speech made Jan. 22, 1909, and the editorial in the February Federationist and asked if he meant to say the language in the speech was impromptu and unpremeditated or that he had not read it from a paper, to which he answered that he means he made no notes and had no manuscript.

The Convention was composed of a great many men whom witness had known in the labor movement; hundreds of them no doubt. Has no doubt there were hundreds of men in the Convention — 1909, when he made the speech who were in the Convention of 1908 when the resolution was acted upon. Does not know how many there were.

Has made no address in which he claimed he was not presiding

when the Resolution was adopted or was not conscious of its purport when it was adopted. In the address referred to in the extract introduced witness every clearly made the statement that the delegates knew he had no knowledge of the matter. The terms he used were he knew he had nothing to do with its preparation which he thinks are evidence of the fact he had no knowledge of the subject at all. In speaking extemporaneously did not say he was not conscious of it, but does say that they understood the circumstances under which he was laboring at the time this Resolution was considered. That he was worried about the mining situation and in ill health. This was so stated to them that they might know he was not cognizant of the Resolution they then had under consideration.

There is read to the witness two paragraphs from his speech reading as follows:

685 "The court says further that I presided as President of the United Iron Workers at a convention here at which a resolution was passed violating that injunction. There are no doubt in this convention hundreds of delegates who were here a year ago who know that I had no knowledge that the resolution was to be introduced. They know I had nothing to do with its preparation, with its consideration, or with its introduction. It came before us as all other resolutions did. As chairman, what was I to do? I had, it is true, three alternatives: I might have resigned the presidency of the United Mine Workers of America; I might have been cowardly and called someone else to the chair and let him accept the responsibility—asked someone else to accept the responsibility of what I dared not do myself. Or I might have accepted the last alternative—I might have stood up before you and advocated the cause of a company that was having trouble with its employees. Does the man who respects me least imagine for a moment I would become the advocate and defender of a company that was at variance with its employees? Would I stand here and fight the cause of a corporation that was trying to destroy the union in its employment? What could I do? What could any self-respecting man do? Would he not have done as I did?

"It is true that technically I was guilty of violating the injunction when I presided over the meeting that adopted this resolution; but I am no more guilty than any other man who was present in the convention at that time. Indeed, I presume that before a jury I would be considered less guilty, because I did not vote for it and everyone else did. I did not vote for it because I was presiding."

686 Witness is asked after hearing it read whether they would get from it the impression that he was informing them that he knew nothing about it and says there is no other deduction to be drawn from the language employed. He was speaking of a time after the Court first concluded he had presided over the Convention and that he had knowledge and conspired at the passage of the Resolution to promote and further a boycott upon the Buck's Stove & Range Co. He had not done so, was actually innocent of any action or intention of that character, and consequently the action of the

Court in concluding him guilty and sentencing him to a long term of imprisonment affected him very seriously and he was speaking under circumstances in which he was not selecting his language as carefully as he would have done delivering an address on an occasion in which he was less personally interested and the rights of the working people were not at stake.

Assumes that if he had been conscious and understood the full import of the Resolution at the time it was under consideration, thinks he would have said "Gentlemen, this is in opposition, in contravention of an injunction that was issued against you and against the workmen of America and perhaps you had better not consider it further." At the time he was speaking a few weeks after sentence had been imposed upon three citizens at a time that indicated to his mind lack of consideration or withholding of consideration from him that might and he thinks would have been given to citizens who were not advocates and defenders of the rights of workingmen.

He has already explained the circumstances under which that address was made and believes that had he been conscious of the full import of the Resolution at the time it was endorsed and under consideration he would have said to the delegates that this Resolution conflicts with the injunction which has been issued and is in effect. Believes that he would then have called their attention to it. Has explained why *why* he would call their attention to it. When he declared if an injunction were issued invading his lawful and constitutional and moral rights he would disregard it he does

687 not mean to modify that at all but wants it to be applied to the right of the freedom of speech and of the press, so clearly defined in the Constitution it does not need a lawyer to know what they mean. The rights the Court of Appeals has said may not be abridged even by the Courts. That is the matter he refers to. Means that until the matter had been passed upon by the highest Court in the United States then he would yield obedience to it and seek legislative relief.

Was present in Court on December 23, 1908, when Justice Wright delivered his opinion and imposed sentence. Heard what he said, among which were the following:

"On the 25th of January, 1908, at the annual convention of the United Mine Workers of America, Mitchell, its President, being in the Chair, the following resolution was passed: Resolution No. 73.

"Whereas, the Buck's Stove & Range Company of St. Louis, Mo., have taken legal steps to prevent organized labor in general, and the officers and Executive Committee of the A. F. of L. in particular, from advertising the above-named firm as being on the "Unfair" or "We don't Patronize" list, and

"Whereas, by the issue of such an injunction or restraining order as prayed for by the above named firm, organized labor will be deprived of one of its most effective weapons, and"

Q. (Reading:) "Whereas, J. W. Van Cleave, the President of the above-named firm, also President of the National Manufacturers

Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"Resolved, that the U. M. W. of A., in Nineteenth Annual Convention assembled, place the Buck stoves and ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above make be fined \$5, and failing to pay the same be expelled from the organization."

Mr. DAVENPORT: "I understand you have already put this in evidence?"

Mr. PARKER: What?

Mr. DAVENPORT: Judge Wright's decision.

Mr. PARKER: Yes, it is in, but I did not take the time to read it. It took two hours and twenty minutes to read it."

Mr. Mitchell testifies:

"I cannot recall anything of the introduction of or passing of the resolution. By referring to the transcript of the record I see I was in the chair when the resolution was adopted:

"Q. But you have no independent recollection in regard to it? A. I have not."

"The official record of the convention shows that on that day two sessions were held: that when the convention was convened in the morning, Mitchell was in the chair; that when it was called to order in the afternoon, Mitchell was in the chair. The record shows resolution No. 73 at length; that Delegate Ryan, Secretary of the Committee on Resolutions, reported it from that Committee; that on motion of Delegate Walker, the recommendation of the Committee was concurred in, the vote being unanimous. Mitchell admits the correctness of the statements of this record.

"Stroud testifies that he was a delegate from the Staunton union, drew the resolution in Staunton, carried it to Indianapolis, and handed it in to the Committee on Resolutions; that it was printed and a copy placed on the desks of all the members of the convention; that he was watching for it from a seat in the balcony near the stage; that he distinctly remembers that when it was offered before the Convention by Ryan, that Ryan was on the platform ten or twelve feet from Mitchell and read the resolution in a 'good clear voice'; that he followed his printed copy as the resolution was read by Ryan to see if any change had been made; that Walker moved concurrence in the recommendation of the Committee on Resolutions; that the motion was put without debate and was declared adopted; and that it was his impression that Mitchell 'gave the closest attention to all the details of the convention so far as came within his scope.'"

689 "Walker, who moved the adoption of the resolution, says he believes Mitchell was in the chair; he says that he remembers making the motion; that he knows it was declared carried, and that he 'came away from there satisfied that it was carried all right.'"

"Mitchell does not deny having heard the resolution; does not deny having put the resolution; does not deny having declared it carried; he says only 'I do not remember.'"

"We accept his statement that he has forgotten; but what of that? The fact that he undertook and discharged the duties of the presiding officer alone raises the presumption that he attended to the affairs of the assembly over which he was presiding a presumption which no mere 'non me recordo' is sufficiently weighty to overcome; moreover, the testimony of the others, the nature of the subject, the identity of the plaintiff, and the then position of organized labor respecting it, and the publicity then given to the situation render it indubitable that Mitchell was fully conscious of the details of the resolution and wilfully took part in its passage at the time."

"Q. After Justice Wright concluded his decision did he ask you to stand up, or after you had stood up did he put to you this question?"

"Mr. PARKER (interposing): I object to this. I object to the procedure that took place.

"The COURT: The objection is overruled.

"Mr. PARKER: I except.

Witness remembers the Court putting to him the question: "Have any of you anything to say why judgment should not be pronounced?"

He replied in response: "If your Honor pleases nothing
690 that has been said by Mr. Gompers, or may be said by Mr. Morrison or myself will have anything at all to do with the conclusion that you have reached or are about to reach. I wish you to know that I thoroughly and unreservedly endorse what Mr. Gompers has said, and I should like to adopt his expressions as my own."

He did not understand that the sentence His Honor was about to pronounce would depend upon the question of whether or not he was really guilty, had he misunderstood the evidence. Understood the Court had reached its conclusions that this decision was prepared and that it was about to impose sentence in accordance with the conclusions reached. Knew he was not guilty. Could not say so because he presumed the asking the defendants was simply a form employed in all Courts. Did not know that the defendants might stand up after conclusions were reached and cases tried and change the conclusions of the Court. Took it for granted that was a legal form gone through and the Court had formed its judgment and the penalties it had then to impose were about to be imposed, therefore he made no statement. That was his understanding of the procedure. In substance believes the Court then said: "I regret that I have heard nothing from you other than reiteration of what I have already reviewed."

Mr. Davenport offers in evidence from the Federationist February 1908 what Mr. Gompers said immediately following:

691

"Why Sentence Should Not Be Passed.

"Replies of Mr. Gompers, Mr. Mitchell, and Mr. Morrison to Justice Wright before Sentence was Imposed in

Contempt Proceedings.

"The COURT: Have any of you anything to say why judgment should not be pronounced?

"Mr. GOMPERS: Yes sir.

"Your Honor, I am not conscious at any time during my life of having violated any law of the country or of the District in which I live. I would not consciously violate a law now or at any time during my whole life. It is not possible that under the circumstances in which I am before your Honor this morning, and after listening to the opinion you have rendered, to either calmly or appropriately express that which I have in mind to say; but, sir, I may be permitted to say this, that the freedom of speech and the freedom of the press has not been granted to the people in order that they may say the *the* things which please, and which are based upon accepted thought, but the right to say the things which dis-please, the right to say the things which may convey the new and yet unexpected thoughts, the right to say things, even though they do a wrong, for one cannot be guilty of giving utterance to any expression which may do a wrong, if he is by an injunction enjoined from so saying. It then will devolve upon a judge upon the bench to determine a man's right to express his opinion in speech and in print.

"There is much that I would like to say. I feel that I cannot say it now, but if your Honor will permit me I will say this.

"Your Honor has, in the course of your opinion, accepted the testimony adduced by the Buck's Stove & Range Company, accepted it as evidence, and laid much stress upon the fact that the evidence is not denied; and upon the failure to deny I can readily understand it may be accepted as having been admitted. But your Honor will see the situation. Supposing some citizen were brought before a Court, charged with a crime, aye, even murder, and if ad-

692
vised and believing that the judge sitting upon the bench would undertake to proceed with the trial of the defendant without submitting such a case to a jury, if the defendant were advised that the Judge, in the exercise of that function, violated the fundamental constitutionally guaranteed rights of the citizen, hence that it was not requisite on his part to enter any defense, and that in the last analysis the higher courts would reverse the decision of the judge upon that ground, and the citizen would therefore enter neither denial nor offer evidence in rebuttal to that presented by the prosecution.

"It is true that the Judge might hold that there being no denial of the testimony presented against him, therefore he would hold the charge as proved, yet as a matter of fact it may prove nothing of the kind, even though it may be before the Court.

"I may say, your Honor, that this is a struggle of the working people of our country, a struggle for rights. The labor movement does not undertake to presume to be a higher tribunal than the courts or the other branches of the Government of our country, and the language quoted by counsel for the Buck's Stove & Range Company, which I am very glad to have the opportunity of explaining, the language accepted by your Honor in your opinion in regard to the A. F. of L. conventions being the highest tribunal in the realms of labor was not, either in my mind, or in the mind of any man that heard that report read, to apply to anything in which the rights of others outside of the labor movement were concerned. It was that in the A. F. of L. Convention some question as to jurisdiction, as to internal strife, and disputes, between these organizations, that in so far as these contests were concerned, the decisions reached by the convention of the A. F. of L. should be received by all concerned as determining their contentions.

"Yes sir, it is a great struggle. It is a struggle of ages, a struggle of the men of labor to throw off some of the burdens which have been heaped upon them, to abolish some of the wrongs which they have too long borne, and to secure some of the rights too long denied.

"If men must suffer because they dare speak for the masses
693 of our country, if men must suffer because they have raised their voices to meet the bitter antagonism of sordid greed, which would even grind the children into the dust to coin dollars, and meeting with the same bitter antagonism that we do in every effort we make before the courts, before the legislatures of our states, or before the Congress of our country, if men must urge this gradual rational development then they must bear the consequences.

"That which your Honor has quoted and criticised and denounced in us, in the exercise of our duties to our fellows in our own country, is now the statute law of Great Britain, passed by the Parliament of that country less than two years ago. If in monarchical England these rights can be accorded to the working people, these subjects of the monarch, they ought not to be denied to the, theoretically, at least, free citizens of a Republic.

"In this struggle men have suffered. Better men have suffered than I. It is true that I do not believe there is a man alive who would chafe more under restraint of his liberty than I would, but if I cannot discuss grave problems, great questions in which the people of our country are interested, if a speech made by me on the public rostrum during a political campaign, after the close of the taking of the testimony in this case, if the speeches in furtherance of great principle, of a great right, are to be held against me, I shall not only have to but I shall be willing to bear the consequences.

"I say this to you, your Honor, I would not have you to believe me to be a man of defiant character, in disposition, in conduct. Those who know me, and know me best, know that that is not my make-up; but in the pursuit of honest convictions, conscious of having violated no law, and in furtherance of the common interests

of my fellow men, I shall not only have to, but be willing to submit to whatever sentence your Honor may impose.

"Mr. MITCHELL: If your Honor please, nothing that has been said by Mr. Gompers or may be said by Mr. Morrison and myself will have at all to do with the conclusion that you have reached or are about to reach. I wish you to know that — thoroughly and unreservedly endorse what Mr. Gompers has said, and I should like to adopt his expressions as my own."

694 Was in the Supreme Court of the United States one day during the argument on cross appeals and the case of the Buck's Stove & Range Co. against the American Federation of Labor. While there a newspaper man told him that at Columbus Ohio in the Convention of the United Mine Workers of America a Resolution was passed severing his connection with the National Civic Federation. He wrote a series of articles in the United Mine Workers' Journal: recognizes paper shown him as a copy. Wrote what is found in the first, second and fore part of the third columns, second page, "Mitchell asks for Impartial Hearing." Paper is dated April 13, 1911.

Mr. Parker objects to its reading and introduction in evidence on the ground that it is not included in the charges made here and was long after it was all over.

Mr. Davenport says it is not introduced for the purpose of substantiating any charge but to show what statements this accused has made in regard to the matter.

The Court after examining the paper said: "There seems to be contained within the body of the article references to what was the condition of Mr. Mitchell's mind at the time of the passage of the Resolution in the Convention which might be construed to be in the nature of admission.

The occurrence in the Court when Justice Wright read to the witness his opinion in regard to himself and recited the names of the witnesses and their testimony, that was within a month before he made the speech Jan. 22, 1909, in the United Mine Workers of America Convention and the W. D. Ryan referred to was its Sec. Treas. at the time. Does not recall but believes J. H. Walker was present in that Convention.

Thereupon Mr. Davenport introduces the article above referred to as follows:

695 "Mitchell Asks for Impartial Hearing.

"Columbus Convention Did Not Hear Both Sides.

"(By John Mitchell.)

"Since the adjournment of the Columbus convention of the United Mine Workers of America I have received a large number of resolutions, letters and telegrams from local unions, individual members thereof and other persons, expressing regret at the action taken by the convention in regard to the National Civic Federation

and my connection therewith. In many instances these communications have requested me to supply information as to the formation, purposes, character and personnel of the National Civic Federation and my services as an officer of that organization.

"I have not had opportunity to make adequate reply to all or even to many of those who have requested this information; I have, however, advised correspondents that just as soon as I could have access to the columns of *The United Mine Workers' Journal* I should offer for publication a series of letters treating with various questions arising in our recent convention and since the adjournment of that meeting.

"A number of delegates attending the International convention made statements regarding the National Civic Federation that were without foundation in fact and in which they—either through lack of information or for purposes best known to themselves—misrepresented, both in what they said and in what they concealed, the real character and composition of the National Civic Federation. Because of this misrepresentation, I deem it a duty to myself and an obligation to the members of our union to prevent all the facts concerning the National Civic Federation as I understand them, and then to ask the members of our union if they will not agree with me that a fair and impartial investigation should have been made by the representatives of our organization before judgment were passed condemning the National Civic Federation and indirectly questioning my integrity and faithfulness to the cause of organized labor, as well as the integrity and faithfulness of the representative officers of various international unions who are also members and officers of the National Civic Federation.

696 "I am confident that if such an investigation had been made and the facts reported, many delegates who voted in favor of the resolution condemning the National Civic Federation and for the amendment to the constitution requiring me to sever my connection with that organization or surrender my membership in the United Mine Workers of America, would not have voted as they did.

"At the very outset, however, I desire to say that a few of the men who were responsible for the introduction of the amendment to the constitution, the purpose of which was to deprive me of my membership in the union, have criticised me for the telegram I sent to the convention in which I expressed the opinion that the action of the convention was a cruel injustice to me. In order that the readers of *The Journal* and the members of our union may understand my reasons for characterizing the action of the convention as "a cruel injustice," it may not be amiss to remind them of the peculiar and difficult position in which I was placed and to relate the circumstances surrounding me at the time the resolution and amendment referred to were under consideration in the Columbus convention. To do this it will be necessary to go back a few years and review certain events with which our membership is more or less familiar.

"During the year 1907 a dispute arose between a manufacturing firm in St. Louis and its employes, who were members of their re-

spective trade unions. Failing to adjust this controversy, the American Federation of Labor placed the name of this firm upon its 'We Don't Patronize' list, whereupon the Supreme Court of the District of Columbia issued an injunction restraining the officers and members of the American Federation of Labor and of all organizations affiliated with it, from interfering in any way with the sale of the products manufactured by this company. As these products were sold extensively in mining communities, one of our local unions instructed its delegates to the annual convention of the United Mine Workers of 1908, to introduce a resolution placing the products of this firm on the unfair list and providing that any member of the miners' union purchasing the product of the firm should be fined \$5,000, failing to pay which he should be expelled from the union.

As you know, I was at that time President of the United
697 Mine Workers of America, and it was my duty to preside over the deliberations of the convention. This resolution was adopted without discussion and by unanimous vote. Some time thereafter, and following my retirement from the presidency of the United Mine Workers of America, I, along with Mr. Gompers and Mr. Morrison, was commanded by the Supreme Court of the District of Columbia to appear and show cause why we should not be adjudged guilty of contempt of court and punished therefor, the principal charge against me being that, as President of the miners' union and presiding officer of the convention which passed the resolution referred to above, I had violated the injunction and disregarded the order of the court.

"When this case came to trial, in the fall of 1908, it developed that attorneys employed by the American Anti-Boycott Association had taken charge of the prosecution and that it was the intention of this union-wrecking association to institute, under the provisions of the Sherman anti-trust act, suits for damages against the American Federation of Labor, the United Mine Workers of America, and all other organizations *they* had participated in the boycott against the concern in question. The knowledge that the United Mine Workers of America was likely to be sued for a large sum of money placed me in a most embarrassing position. If I had volunteered information that would have relieved me of personal responsibility for the passage of the resolution by the miners' convention, my testimony would have been used by Mr. Van Cleave and his attorneys in prosecuting a suit for damages against the United Mine Workers of America. With this situation before me, I considered it to be my duty as a union man to jeopardize my own liberty if in doing so I could protect the funds of the miners' organization. I am entirely convinced that if I had volunteered all the information in my possession while this trial was in progress, I should have been acquitted of responsibility for the passage of the resolution in question.

"On the very eve of Christmas—that is on December 23—1908, Justice Wright of the Supreme Court of the District of Columbia announced his decision in these proceedings. The readers of the Journal will perhaps remember the scathing, intemperate terms he
698 employed in denouncing the defendants because of their loyalty to the interests of labor. The members of our union

will also recall that sentences of long terms of imprisonment were passed upon us.

"Acting under the direction of a convention of the American Federation of Labor, an appeal was taken from the decision and sentence of Justice Wright, and nearly a year later the justices of the court of appeals rendered a decision affirming the sentences imposed upon us by the lower court. Again, in conformity with the direction of the convention of the American Federation of Labor, an appeal was taken, this time to the supreme court of the United States.

"At this point it may not be amiss to remind some of our critics that it was not fear of going to prison and suffering the penalties imposed upon us that caused us to appeal these cases to the highest judicial tribunal. The facts are that certain constitutional questions are involved which the conventions of the American Federation of Labor desired to have tested in the highest court in the land, and the only way by which these questions could be so tested was through appeals from the decisions and sentences of the lower courts.

"My purpose in reviewing the history of this case is to give the readers of our Journal an idea of how I was situated and how I felt when, on the 26th day of last January—while in the presence of the Supreme Court of the United States, listening to the attorneys of the American Anti-Boycott Association denouncing me and my associates because of our activity in defending the interests of labor—a newspaper man brought me a dispatch containing the statement that the delegates attending the Columbus convention were discussing a resolution the purpose of which was to deprive me of my membership in the union unless I gave up my membership in the National Civic Federation. Was it not natural for me to feel, under the circumstances then existing and when it was known to be impossible for me to leave Washington, that the miners' organization, whose interests I had fought to protect and for whose protection I had jeopardized my liberty, should be the last to raise a voice against me? Next morning, that is, on January 27, the newspapers of Washington carried the statement that Mitchell and the National Civic Federation were

699 being denounced by delegates attending the miners' convention—and this at the very moment when the enemies of labor were making their supreme effort to have me sent to prison because of a resolution adopted by a miners' convention just three years before!

"Perhaps by the time this article is published the decision of the United States Supreme Court will have been rendered. While I am in hopes that the decision will be favorable to me and my associates, yet if it is against us we shall not complain. In either event I shall have the satisfaction of knowing that I did my best to protect the interests and the funds of our union until, such time as through an agreement with the firm whose products were boycotted, all danger of a suit for damages against our union had passed.

"On the afternoon of January 27 I received a telegram from Columbus advising me that a substitute for the resolutions then pending had been adopted and that my right to membership in the union was not affected by the adoption of the substitute. Therefore

I was astonished to receive, on Tuesday morning, January 31, information from Columbus to the effect that upon its own initiative the Committee on Constitution had recommended an amendment to the constitution providing that a member of the United Mine Workers of America could not be representative of the National Civic Federation, and that by a standing vote this amendment had been adopted. I was not informed at that time that following the standing vote a roll call had been demanded, but in order that the delegates to the convention might understand how keenly I felt that an injustice had been done, I sent the following message by telegraph.

"Mr. Edwin Perry, Secretary, Miners' Convention, Columbus, O.

"Gentlemen of the Convention—I am advised that by an amendment of constitution I am deprived of my membership in the United Mine Workers of America unless I relinquish my membership in the National Civic Federation. While I regard this action as a cruel injustice, following, as it had, an overwhelming vote of confidence on the part of the miners of the country as evidenced by my
700 election as a delegate to the American Federation of Labor, and coming at a time when the enemies of labor are exerting their every influence to have affirmed by the Supreme Court of the United States the sentence of nine months' imprisonment imposed upon me because of a resolution adopted by a miners' convention, yet I recognize the legal right of the convention to enact this legislation, and while I believe that an investigation should have been made by your convention before passing judgment adverse to the National Civic Federation and against me personally, nevertheless I submit to your wishes, although I shall live in the consciousness that the men and women at home, for whom I worked for so many years, will not concur in your conclusions."

"This telegram was delivered at the convention hall at eighteen minutes past one, just before the opening of the afternoon session, but for some reason unknown to me, it was not read to the delegates until after the conclusion of the roll call.

"The prediction made in my telegram—that the men and women at home in whose interests I had worked so many years, would not concur in the conclusions of the convention—has been more than confirmed by the action of the miners in various parts of the country in adopting resolutions dissenting from and expressing disapproval of the action of the majority of the delegates attending the Columbus convention.

"In order that there may be no misunderstanding, I take this occasion to say that while I feel that a great wrong was done me by the Columbus convention, I do not hold the rank and file of our membership responsible in any degree for this injustice. I am entirely convinced that if the members of our union at home had been consulted, they would not have permitted a fellow worker to be condemned without having the fullest opportunity to appear and speak in his own behalf, and especially at a time when he was standing in the shadow of a federal prison because of his fidelity to their interests.

“However, I have always considered it to be the duty of a union man to obey the laws of his union; therefore, notwithstanding my conviction that the convention erred in amending as it did the constitution of the organization, in accordance with my telegram to the convention I tendered my resignation as a representative and a member of the National Civic Federation, and President Low accepted the resignation, to become effective March 31, 1911.”

The information witness withheld from the Court on the trial which would have relieved him of personal responsibility for the passing of the Resolution at the Miners' Convention, he has testified to in the present proceedings.

Witness is asked what information may have been withheld which would have established his innocence of the charge.

To which Mr. Parker objected and the Court overruled the objection and Mr. Parker excepted. Witness says the information withheld was that he had not signed the Urgent Appeal. Withheld the information he was not present at the meeting of the Executive Council of the A. F. of L. Admitted as he believes that he should not have done that he had no doubt that he was present in the Chair when the Resolution was adopted. Thinks he was not justified in making even that admission because there was too much doubt as to his presiding at the time it was adopted to justify him in stating there was no doubt he was in the Chair. Says also as a part of his reply that his understanding of the Court's process when he wrote this article was that as he decreased his own responsibility he correspondingly increased the responsibility of the Miner's Organization and vice versa. Therefore as Counsel knows he went to trial making substantially no defence for himself at the last hearing and that was what he had in mind when writing this article.

The term withheld information was perhaps not a good word but that is the fact. Was not asked at the last hearing whether he had signed the urgent appeal. Did not understand there was any obligation to call upon him to relieve himself of the responsibility, and therefore made no statement at the time sentence was passed with relation to it. Did not know that it was more than a perfunctory form in all courts that men stand and are asked the question. Did not know that men could defend themselves after the Court had formed its judgment and therefore in connection with that made no statement to the Court as to the matter.

Always felt that the then Counsel for the Buck's Stove & Range Company was quite aware he had not signed the Urgent Appeal and was not present at the meeting of the Council. Withheld the information but it was not asked for. Did not fail to answer all questions and as no inquiry was made that he could recall upon the subject of the Urgent Appeal he made no reply.

Mr. DAVENPORT:

Q. Were you not called upon by the very petition itself to show cause why you should not be punished for doing that thing?

Mr. PARKER: I object to that as immaterial and incompetent.

The COURT: The objection is overruled.

Mr. PARKER: I except.

Witness could not remember the exact terms of the petition and therefore cannot answer.

Mr. Davenport reads from the "Decision Reviewed" by Samuel Gompers, John Mitchell and Frank Morrison, on page 142, February, 1909, Federationist as follows.

704 "In order specifically to point out some of the manifest errors to which the Court has fallen, as an illustration, take the case of Mr. Mitchell. He is charged with having 'signed, with full knowledge of its contents, the Urgent Appeal, which accompanied the Twenty-seven odd thousand circular letters to the various secretaries, with full knowledge of their contents, counselling their distribution.' This Urgent Appeal and accompanying circulars is presumed to have originated from the Norfolk Convention of the American Federation of Labor, which was held in November, 1907. The facts are that Mr. Mitchell was not present at the Norfolk Convention, did not attend any session of the Executive Council of the American Federation of Labor, either then or at any subsequent meeting at which the Urgent Appeal was under consideration. Mr. Mitchell did not sign or have knowledge of the preparation or circulation of the Urgent Appeal. If this case had been tried by a jury it would have been easy to demonstrate the falsity of this allegation against him."

By Mr. DAVENPORT:

Q. So that this information which you say you withheld to protect the funds of your organization you immediately afterwards published broadcast in the American Federationist, did you not?

A. As an argument for the change in the process or procedure in contempt cases.

705 Witness has stated has testified two or three times in this case that he would have been perfectly justified and clearly within the facts in having testified in the first case that there was serious doubt as to his being in the Chair at the time the Resolution was adopted. Instead he testified—was perhaps justified in testifying basing his opinion on the printed proceedings of the Convention that he was likely in the Chair and there seemed to be no doubt of it. Perhaps he might not have understood all the legal aspects or responsibilities but concluded that as the responsibility of one person was increased the responsibility of the organization was correspondingly decreased. This was his reason as a layman. Has explained his idea as far as he is able to do so, and this is his answer.

In the February, 1909, Federationist, (the first editorial) in the article speaking about the declaration of the boycott by the American Federation of Labor against the products of the Buck's Stove & Range Co. during the year 1907, had reference to the boycott against that Company. Cannot recall when he first learned there was a boycott declared by the American Federation of Labor against the Buck's Stove & Range Co.

Attended the Minneapolis Convention of 1906 and the meeting

of the Executive Council held there in November. Has no doubt he attended. Did not attend the meeting of the Executive Council March, 1907, when the declaration of unfairness against the Company was made. Thinks his notes show he was in the Hospital in March, 1907. Has no memorandum on that but is quite sure he was not at the meeting of the Council that declared the firm unfair.

As early as August 1907 when the suit was brought and papers served he knew of the existence of that boycott and that it was alleged in those papers that the declaration of unfairness had been made against the Company, by the American Federation of Labor, of which he was an officer and one of the Executive Council.

Witness is asked if as an officer of that session he took any steps after the suit was commenced or injunction granted to secure the rescinding by the Executive Council of that declaration of unfairness. To which Mr. Parker objected, the objection was 706 overruled by the Court and exception noted.

Witness did not take such action. Did not understand that the injunction required he should and his recollection is he did not attend the meeting of the Executive Council after the issuance of the injunction, with one exception, until the following calendar year. He understood that the injunction embraced within its prohibitions the United Mine Workers of America.

When the petition to have witness adjudged in contempt was presented and the rule to show cause issued the witness knew that the United Mine Workers of America had passed a resolution placing the Buck's Stove & Range Co. on the unfair list, and to the question whether he did not know that it was not only a declaration of boycott but a violation of the injunction, he answered that he had no responsibility for it. He knew it when the petition for contempt was served upon him in September, 1908.

In September, 1908, was no longer President of the Miners' Union; he knew what the petition contained when it was served upon him and at that time was Vice President of the American Federation of Labor. Knew it was charged that he presided at that Convention and put that resolution. The only action he took was that in the Executive Council American Federation of Labor he voted with the other members to withdraw from the We don't Patronize list the name of the Buck's Stove & Range Co. That was done. Has rather an indistinct recollection of having consented in some form, either in the form of a letter or otherwise, to the withdrawal from the We Don't Patronize list of the American Federation of Labor of the name of the Buck's Stove and Range Co.

Has a quite distinct recollection in one Convention of the United Mine Workers of America, believes that of January 1909, action was taken, a motion made and adopted reconsidering the action of the miners in regard to the boycott of the Buck's Stove & Range Co.

It is true that at the January 1909 convention he made the speech here so often referred to and read. There was no intimation in that speech of that subject at all. That speech was in reference to

the subject of judicial procedure and the necessity for legislation to correct what he regarded as an unwise policy.

707 Nothing in that speech carried any intimation of the desire to have rescinded the action taken which had brought about this result. Recollection is that delegate Ryan made a motion on the floor of the Convention, not in the form of a Resolution, that this Resolution proposed by the Staunton Local Union should be re-considered and that that action was adopted by the Convention. If so there will be a record of it which he will try to produce. Has not brought with him the record of the Convention.

He continued to be a member of the American Federation of Labor and the Executive Council during the years 1909 and 1910. Knew during the summer of 1910 that negotiations were going on between the representatives of the American Federation of Labor and the Stove Co. with the details of which he was not familiar. Remembered a statement appearing in the papers. Does not know anything as to month or date. Does not recall whether there was an interview, or a letter, with or from Judge Parker published in the New York papers addressed to Mr. Gompers congratulating him upon the settlement of the then existing dispute. Does recall something of the circumstances.

There was not to his knowledge any meeting of the Executive Council for the purpose of putting an end to the boycott at that time. Recognizes volume of proceedings of the 30th Annual Convention of the American Federation of Labor held in St. Louis, November 1910, united in the regular Executive Council Report at that Convention.

Mr. Davenport reads from pages 118 and 119 of the report as follows:

708 "At peace with the Buck's Stove and Range Company.

"At our June meeting, Vice president Valentine called attention to the fact that by reason of the demise of Mr. J. W. Van Cleave, the Buck's Stove and Range Company went into the hands of a new management and that an opportunity was afforded to successfully renew the efforts at the adjustment of the dispute with the company where it had failed some years before under the old management. We authorized him to make such effort as he could; that we were desirous, as we always have been, of coming to an honorable adjustment of any difficulty which we might have with employers. Through his efforts a conference was held at Cincinnati, July 19, 1910, at which officers of the Stove Founders'

National Deference Association, representing the Buck's Stove and Range Company, conferred with the following representatives of labor. Joseph F. Valentine and John P. Frey, representing the International Moulders' Union of North America; T. M. Daly and Charles R. Atherton, representing the Metal Polishers, Buffers, Platers, and Brass Workers' International Union of North America; Frank Grimshaw and J. H. Kaefer, representing the Stove Mounters' International Union; George Bechtold, representing the International Brotherhood of Foundry Employees, and Samuel Gompers, representing the American Federation of Labor. The conference

lasted all day and until late in the night, and an agreement reached. The agreement was published in the September issue of the American Federationist. This agreement was carried out by two subsequent agreements, one in the matter of the labor conditions which were to prevail in the company's plant, and the other changing the original agreement by which the attorneys of the company should be withdrawn from the case pending before the United States Supreme Court. The new management of the company has declared that it has always been its policy to live in terms of good will and friendly relations with organized labor, and that it proposes to continue to conduct its business affairs on these lines in the future. We deemed it our duty to state to organized labor, its friends and sympathizers, that the industrial trouble between labor and that company has come to an end by mutual honorable adjustment, and that the company, like all other employers fairly disposed toward organized labor, is entitled to the courtesy, consideration and patronage of all."

709 Witness concurred in taking that action and his name is signed to the report. It was not prepared by him. Recognizes the September, 1910, Federationist shown him.

Mr. Davenport reads from page 760 of the Federationist for September, 1910, as follows:

710

"Official Notice.

Headquarters of the American Federation of Labor.

WASHINGTON, D. C., July 29, 1910.

"To all whom it may concern:

"An honorable agreement has been reached between the Buck's Stove & Range Company and the American Federation of Labor and its affiliated organizations primarily interested.

"The long drawn out industrial dispute has been adjusted.

"The new management of the Buck's Stove & Range Company has always been, is now, and proposes to continue friendly to organized labor.

"Labor in its struggle with the workers' rights earnestly seeks agreements with employers who are fair minded, and fair in their attitude toward and dealings with organized labor. Such is the position of the Buck's Stove & Range Company and the American Federation of Labor. The company is now entitled to and should receive, the courtesy, consideration, and patronage which labor, its friends and sympathizers can give it.

"Secretaries are requested to read this notice at the meetings of their respective organizations, and labor and reform press please copy.

"By order of the Executive Council.

"SAM'L GOMPERS,

President, American Federation of Labor.

"Attest,

"FRANK MORRISON,

Secretary, American Federation of Labor."

711 And from page 807 of the same as follows:

"By an agreement reached at Cincinnati, Ohio, July 19, 1910, the industrial dispute between organized labor and the Buck's Stove and Range Company of St. Louis came to an end.

"The following is a copy of the agreement:

"A conference was held at the office of the International Molders' Union of North America, 707-712 Commercial Tribune Building, Cincinnati, Ohio, on the 19th day of July, 1910, in which the following participated: William H. Cribben and Thomas J. Hogan, representing the Stove Founders' National Defense Association; Joseph F. Valentine and John P. Frey, representing the International Molders' Union of North America; T. H. Daly and Charles R. Atherton, representing the Metal Polishers, Buffers, Platers and Brass Workers' International Union of North America; Frank Grimshaw and J. H. Kaefer, representing the Stove Mounters' International Union; George Bechtold, representing the International Brotherhood of Foundry Employés; and Samuel Gompers representing the American Federation of Labor.

"The conference was held for the purpose of considering ways and means for adjusting the dispute between the various organizations of labor and the Buck's Stove and Range Company of St. Louis, Mo., Messrs. Cribben and Hogan, being authorized by the new manager of the Buck's Stove and Range Company of St. Louis, Messrs. Cribben and Hogan for the new manager declared that he is the supreme authority for the company; that he expects to be in the active management thereof, and as Chairman of the Board of Directors is the highest official of the company; that every one of his associates in the directory and in the management of the company will be loyal to his views; that his position with reference to organized labor is that it is an institution which has come to stay for all time and that it has to be treated with wisely and conservatively, and upon friendly basis, and that these views and their attitude has always been his, and that the feeling and action

712 of every one connected with the Buck's Stove and Range Company will henceforth be in this direction.

"The representatives of labor expressed themselves as being in entire accord with these expressions and declarations, and stated that there is no feeling of antagonism to the Buck's Stove and Range Company, and that under its new management a friendly understanding may be reached and an agreement made by which all may co-operate to the mutual advantage of the company and organized labor. To that end the following memorandum of agreement was made.

"1. Within thirty days the officers of the organizations herein named shall meet with the manager of the Buck's Stove and Range Company at St. Louis, Mo., for the purpose of determining wages, hours of labor, and conditions of employment of the workers in the departments which they respectively represent.

"2. That the agreement in regard to wages, hours and conditions of employment shall take effect ninety days from the date thereof, based on wages and conditions existing in shops of competition it

the city of St. Louis, Mo., operating union shops, fair conditions being the purpose of this agreement.

"3. That the labor organizations in interest herein named shall jointly make known and publicly declare that all controversy or difference with the Buck's Stove and Range Company of St. Louis has been satisfactorily and honorably adjusted.

"4. That the Buck's Stove and Range Company, through its representatives, Messrs. Cribben and Hogan, agree that it will withdraw its attorneys from any case pending in the courts, which have grown out of the dispute between the American Federation of Labor, and any of its affiliated organizations on the one hand, and the Buck's Stove and Range Company on the other, and that the said company will not bring any proceedings in the courts against an individual or organizations growing out of any past controversies between said company and organized labor.

713 "5. That a copy of this memorandum and agreement will be published in the next issue of the official journals of the organizations participant in this conference, and in printed form placed conspicuously in the several labor departments of the Buck's Stove and Range Company. And as far as practical every publicity be given to the satisfactory agreement reached between the Buck's Stove and Range Company and the American Federation of Labor.

"For the Buck's Stove and Range Company and the Stove Founders' National Defense Association, Wm. H. Cribben, Thos. J. Hogan.

"For the International Molders' Union of North America, Jos. F. Valentine, John P. Frey.

"For the Metal Polishers, Buffers Platers and Brass Workers' International Union of North America; T. M. Daly, Chas. R. Atherton.

"For the Stove Mounters' International Union; Frank Grimshaw, J. M. Kaefer.

"For the International Brotherhood of Foundry Employés, George Bechtold.

"For the American Federation of Labor: Samuel Gompers.

"This agreement was printed and immediately a copy was sent to each union, organizer, and the labor press of the country."

714 So far as witness knows from the time the injunction became effective up to the present time there was no boycott prosecution by the American Federation of Labor and certainly none by him personally. That it is difficult to answer what the witness means by "no boycott prosecuted;" if Examiner means to say, would a Union man buy one of those stoves, witness answers his judgment is he would not. Knows nothing of it however. The custom in the American Federation of Labor is to attach the names of the members of the Executive Council for any appeal sent out for financial assistance, either in aid of a strike or for the purposes of defraying the expenses of litigation, unless a member of the Council specifically requires that his name be not attached. Witness' name was attached to the Urgent Appeal in this manner.

Q. Mr. Mitchell, did you express any dissent thereafter when you knew that such a circular had been issued over your signature?

This question, Mr. Parker objected to, to any attempt to make out contempt of court by ratification or acquiescence, which objection was overruled and exception noted.

The WITNESS: I did not.

He attended the Denver, Col., Convention of the American Federation of Labor, held in 1908. Believes it was in November, following the month in which the Urgent Appeal was issued. United in the report of the Executive Council, is quite sure he did. Had nothing to do with the preparation of the report.

Attention is called to the following from that report: "We levied but one assessment of one cent per member and preferred to issue an appeal for voluntary contributions, for the defense fund, rather than to levy another assessment."

715 The witness says the appeal was issued in the name of the Executive Council by officers of the American Federation of Labor. This is an Executive Council report and of course they say "we" because they are reporting for it.

Never suggested that he dissented from this action. Did not. Had answered to Judge Parker that if he had been apprised of it in advance he would have concurred in issuing the Urgent Appeal.

Had that *that* state of mind that he would have approved of it if he had known it. He later signed the statement which 716 said that he had issued it, and withheld knowledge of the fact that he had not signed it through the progress of that case.

The Urgent Appeal was an appeal for funds to carry on litigation, to carry forward the appeal from the injunction issued by Justice Gould and the purpose for sending it out was for money to carry on the litigation. That was the only way in which the money could be secured. Should of course have signed his name if he had been present for the issuance of such an appeal.

The statement to the Convention of which he was an officer was made after he had been charged with contempt for issuing the appeal but prior to the convention by the court prior to the time the Court had decided it was in conflict with this injunction.

In November, 1908, as he recalls, was the Denver Convention, and his recollection is that it was prior to the time the issues had been determined by the Court. There were only two processes by which funds could be raised in the American Federation of Labor, in addition to its regular income: levying an assessment and the other issuing an appeal. To levy the assessment makes it obligatory on all organizations to pay or they are suspended from membership and many of them are not so able to pay as others. The appeal is responded to by those most able to pay and imposes no burden on those less able.

His understanding was the appeal was issued for the purpose of raising funds to carry on litigation. Has heard the reading of the report of the Secretary of the Convention in regard to the matter. Is not aware that not one penny of the money raised in that way was raised for the purpose of carrying on that litigation. Was not aware

at what time bills were paid from the fund. Does not know when they expended the money, but it was from that fund the expenses were paid. Feels quite positive about that. Is not aware that it is true that the money was used to prosecute a boycott, or create any feeling against the courts, or carry on a political campaign.

There is no special duty of the witness as an officer of the
717 American Federation of Labor and a member of the Council to see that the funds are used for the purpose for which they are raised. The Executive Council has power of supervision over the expenditures of the finances.

He repeatedly stated to those who discussed the matter with him, not on any public occasion, that he had no recollection of Resolution 73, and if he were presiding he must have been so much absorbed in the matters affecting the welfare of the organization that he failed to be impressed with it at the time.

Knows nothing about the reference in the January, 1909, Federationist, at the bottom of page 32, where attention is directed to a letter from Ralston & Siddons published in another part of the issue, and nothing about the letter referred to.

Was present at a meeting of the Executive Council held January 11, to 16, 1909, following the decision. Does not recall whether he heard read or not the extract from President Gompers' report dated Washington, D. C. January 11, 1909, addressed to the Executive Council of the American Federation of Labor and on page 270.

Never read the correspondence of Judge Parker and Ralston & Siddons. Cannot remember that he had known about it until now.

Witness' attention is called to the following extract from page
145 of the February, 1909, Federationist, reading as follows:

718 "We had a right to disregard the injunction in those particulars, of the right of free press and free speech, but we realized at all times that we did so at our peril—that is, the peril of being judged guilty of contempt and of receiving the most extreme sentence which any judge might impose. All this has happened. We realized from the beginning that we might have to sacrifice our personal liberty in order to defend the liberties of the people of our country. We have no complaints to make on personal grounds. We stand ready and willing to serve the sentence imposed if the higher courts shall so adjudge.

"We have not asked, and will not ask, for clemency, and we hope our friends will not urge us to pursue such a course. Loving liberty as freemen do—as we do—it can not be difficult to appreciate what incarceration in a prison would mean to us. To ask pardon would render useless all the trial and sacrifice which our men of labor, and our friends in all walks of life have endured, that the rights and liberties of our people might be restored.

"To ask for a pardon would settle no principle involved, would restore no right, would protect no threatened liberty. Such a pardon would only leave the whole case in confusion, and it would have to be fought over again from the beginning."

719 Witness was asked what he meant by the foregoing extract and states it means exactly what it says. Does not think he is able to elucidate it.

"Q. You had disregarded the injunction?"

"A. So far as the exercise of freedom of speech and freedom of the press, and that is to what it refers and says so; and in that respect our contention, as I believe, has been vindicated by the Court of Appeals, that liberty of speech and liberty of the press may not be enjoined."

His judgment was that the Stove Company at that time might have deferred bringing the contempt proceedings while the question of the injunction was in the Court of Appeals. By that process a decision would have been reached without going through all the trouble and expense of the contempt case, and trial.

Does not understand that the Boycott was being prosecuted. To the question what was being *down* in defiance of the injunction, he answered that men were exercising their right of freedom of speech and carrying on political campaigns.

Mr. Davenport calls witness' attention to the following extract: "We had a right to disregard the injunction in those particulars of the right of free press and free speech, but we realized at all times that we did so at our peril, that is, the peril of being judged guilty of contempt, and of receiving the most extreme sentence which any judgment might impose."

720 Witness says he meant by that the defendants in this case had as much right as any other citizen of the United States, to take part in political campaigns, to advocate political reforms. As much right as any other citizens to take cognizance of the Court's decision and action of the Court which they believed to be in contravention of their rights. That they had a right to do as other citizens have in the matter of promoting political reforms.

To the question what he meant by the following from the editorial "We hold that we cannot be guilty of a violation of the injunction because the injunction, being in contravention of the Constitution, is therefore null and void. We could not very well violate an injunction which has no constitutional standing or existence. Hence we cannot be in contempt," he answered, his position is that he can not be in contempt of Court unless he had done or said something in furtherance of the boycott, and

721 Witness was asked what he meant by the foregoing extract and states it means exactly what it says. Does not think he is able to elucidate it.

"Q. You had disregarded the injunction?"

"A. So far as the exercise of freedom of speech and freedom of the press, and that is to what it refers and says so; and in that respect our contention, as I believe, has been vindicated by the Court of Appeals, that liberty of speech and liberty of the press may not be enjoined."

His judgment was that the Stove Company at that time might have deferred bringing the contempt proceedings while the question of the injunction was in the Court of Appeals. By that process a decision would have been reached without going through all the trouble and expense of the contempt case, and trial.

Does not understand that the Boycott was being prosecuted. Men

were exercising their right of freedom of speech and carrying on political campaigns.

Mr. Davenport calls witness' attention to the following extract: "We had a right to disregard the injunction in those particulars of the right of free press and free speech, but we realized at all times that we did so at our peril, that is, the peril of being judged guilty of contempt, and of receiving the most extreme sentence which any judge might impose."

Witness says he meant by that the defendants in this case had as much right as any other citizen of the United States, to take part in political campaigns, to advocate political reforms. As much right as any other citizens to take cognizance of the Court's decision and action of the Court which they believed to be in contravention of their rights. That they had a right to do as other citizens have in the matter of promoting political reforms.

His position is that he cannot be in contempt of Court unless he had done or said something in furtherance of the boycott, and that he did not do and believes that no other defendant in this case did. Speaking for himself he did not do it. United in the preparation of this editorial.

Attention is further called by Mr. Davenport to extract from page 144 of the February, 1909, Federationist, and he is asked if he wishes to say that he did not violate that injunction. Witness replies that he wishes to say that he did not violate that injunction. That the editorial refers to the interpretation that was placed upon the injunction by His Honor Justice Wright, that prior to that interpretation being placed on it, he had no idea that it prevented him from speaking of the controversy unless he were to do it in furtherance of a boycott.

In other words his understanding was it was to enjoin a boycott or anything in furtherance of a boycott, and that there was no violation of the injunction by making political speeches or advocating judicial reforms or referring to this case, as illustrating the necessity of political legislation and political reforms unless they were done in furtherance of a boycott. Where the editorial refers to the fact that they were enjoined from even mentioning the Company that was a deduction. Witness did not actually write that language. That refers to the interpretation that seems to have been placed upon it by the Court.

Witness' attention is called to the following:

"More significant than even the pledges of personal devotion are the assurances from many sources that if we are immured behind the prison walls these stand others ready to carry on the struggle for justice and right—aye, even until all the prisons shall be filled.

"We sincerely trust that our country may be spared a prolonged and bitter struggle for the preservation of the rights and liberties for which our patriotic forefathers fought; but should such a struggle be precipitated the responsibility will rest with those who attempted to abolish the right of free speech and free press—not with those who resisted the usurpation for humanity's sake.

"The full significance of this decision of Justice Wright's should sink deep into the hearts and minds of our people. We believe that the people of this country will not submit to

have their constitutional liberties suppressed by a judge-made order."

The witness says those lines were not penned by him and were not anything like an incitement or attempt at revolution or assassination or an attack upon the Van Cleave Company or the people. The lines were re-read to the witness and he was asked if there is nothing in them that suggests an expectation that a revolution is impending or that violence shall be resorted to. The witness states that there is nothing in them calculated or that can be interpreted as violence or anything of that sort. Witness did not pen these lines. Is not sure who did. Probably Mr. Gompers. Witness adopted them with a clear understanding of his own that they meant that there would be political agitation unless liberty of speech and of the press are restored to the people and by legislation the powers of courts in the issuance of injunctions so defined that there will be no question in the future as to the right of freedom of speech and of the press being secured in the hands of the people subject always to punishment by law for the abuse of that right.

Witness is asked as to the meaning of the following words: "More significant than even the pledges of personal devotion are the assurances from many sources that if we are immured behind prison walls there stand others ready to carry on the struggle for justice and right—aye, even until all the prisons shall be filled," and asked if he understood them to be carrying on a political campaign to amend the Constitution of the United States. Witness states that he understood them to mean to carry on political agitation throughout the country until the reform had been established and the right as now defined in the Constitution restored as he understands it was restored by the decision of the Court of Appeals.

Witness' attention is called to the following lines from the top of page 144:

"The guarantees of the freedom of press are not confined to the daily press, weekly or monthly magazines, but apply with equal force to pamphlets, brochures, or circulars. Those violating law,—those who express seditious sentiments or publish slanders or libels,—do so at their peril, being responsible for their utterances. These responsibilities and perils are in civilized countries regarded as the greatest preventatives of the abuse of the freedom of speech and of the press."

and asked if he understood that he was asserting and defending the right to send out circulars such as Gompers had written and Morrison sent out regarding the Buck's Stove & Range Co. and states that he does not know to what circulars reference is made. He should say that if it refers exclusively to the right of appeal for funds to carry on litigation or promote legislation it would refer to such circulars.

Understands the paragraph quoted to mean the right to print circulars secured by the Constitution. With that understanding the person who sends the circular, who writes letters, who publishes thought, may be punished under the law if he abuses that right, slanders a man, prints seditious matter, or anything of that sort, but if not a subject that may be enjoined, that a man may not be enjoined from freedom of speech or of the press.

Has no knowledge of having presided over that Convention and put that Resolution. The witness' attention is called to his speech in the Toronto Convention as follows:

"I propose in the future, as in the past, to exercise the right guaranteed me by the Congress of our country; I propose—if I am sent to jail—when I come from there to declare again that I shall not, for myself, purchase any product of the Buck's Stove & Range Co. I make this declaration not to tickle the ear of any man, I make it solely that I may declare publicly the conviction that is within me."

and asked if he did not have in mind there the carrying on of a boycott. To which he says he had in mind only the exercise of his individual and personal right to buy or not to buy where
725 he chose and his personal choice was not to buy a Buck Stove or range while the Company was at variance with its employees. He had that right and the injunction did not infringe upon his right to buy or refuse to buy where he chose and it was not in any furtherance of a boycott the speech was made.

Attention is called to the fact that the speech followed a report from the Committee on boycotts, commencing on page 261 of the proceedings of the Toronto Convention of 1909 and reading as follows:

726 "We concur with the sentiment expressed by the Committee on Boycotts at the Norfolk Convention that the boycott should only be resorted to after all efforts at adjustment have failed, but when instituted, it should be made so effective that speedy agreement between the firm and union affected will follow. In speaking of the boycott, the President, in his annual report, had this to say:

"While the discussion of greater issues in the past year has tended to relegate to the background such rights as that of the boycott, yet I should be recreant in my duty were I to remain silent upon that subject, and thus, perhaps, strengthen an impression which has been assiduously given out by our opponents, that the boycott—that is, the right to withdraw patronage, to bestow it upon whom we please—has been withdrawn from the workers of the country during the legal proceedings in relation to the injunction secured by the Buck's Stove & Range Company.

"It will be remembered that the injunction was sought primarily to restrain the people in their right to quit buying Buck's stoves and ranges. It overreached itself so far that the right of the freedom of speech and press became involved. However, no consideration of the injunction has been possible by the courts without taking up the principle involved in the boycott.

"We have always held, and we still hold that the workers, or any of the people, have the right to withhold or to bestow their patronage as they would choose; that they have the right to advise friends and sympathizers of this action and of the reasons therefor. It is hardly necessary to state that in the case of the workers, the unfair attitude of the dealer in question has always been the reason

727 for withdrawal of patronage. It has been made clear that he refused to pay the standard rate of wages, and to agree to other equitable conditions which the workers seek through their organizations, and hence the withdrawal of patronage. The boycotts declared by other citizens have sometimes been placed for other reasons, and they can safely be left to a defence of their own actions. I only wish to point out in passing that the boycott is by no means a weapon used by the workers alone. It is one of those inalienable rights which are at times used by all people. The right to withhold or bestow patronage is one of those things which can neither be enjoined, forbidden, nor punished.

"With the statement expressed and the policy enunciated our committee is in most hearty accord. The wares of the labor-boycotted enterprise, to the eye, are made up of the products of nature, fashioned by the hands of more or less unskilled workers; but to the individual with the capacity for analysis, there is visible the blood and innocence of the child, the health and virtue of the woman, and the disputed and denied right of the toiler to collectively bargain for the sale of labor. It impresses your committee that the opposition to the boycott, when it takes its legal form, is really intended to cover the economic iniquities of affected capital, to withdraw the attention of the public from the labor exploitation and center it on the ethics of the boycott, as wrongfully expounded, to becloud and befog the real issue, so that the unfair producer, the enemy of his own class as well as of the wage-earner, may be free to continue his industrial piracy while the consumer is sent chasing false gods and exploded economic theories. The protection of the law is sought by skilful pleaders for special privilege, in order that the rottenness, the tyranny and the horrible working conditions associated with the boycotting manufacturing plant may be obscured to the public gaze. If in instances where the boycott is now necessary the right kind of publicity could be had, the boycott would be unnecessary, for an aroused public conscience would speedily compel the manufacturing and the selling malefactor to put his establishment in industrial order or go out of business.

728 "But under present conditions the boycott is a necessary legal and moral weapon, and one that, as the President well says, there should be no hesitation to resort to when other remedies fail and the occasion demands the unusual and drastic antidote. Lawyers' associations, scientific bodies, even the fraternal societies, medical societies, all forms of combined human endeavor—all resort to the boycott to achieve their legitimate, and in some instances illegitimate ends. Why then, should not the labor union have that right with its cause a just one, and its desire the betterment and uplifting of those who follow the scriptural injunction, 'In the sweat of thy face shalt thou eat thy bread.' If an individual has the right to refuse to patronize, then that same individual has the right to enlist the sympathies of his fellowmen, and it follows that if the two have the — to refuse to patronize, then labor in combination has the right to refuse to patronize.

"We say that when your case is just and every other remedy

has been employed without result, boycott; we say that when the employer has determined to exploit not only adult male labor, but our women and our children, and our reasoning and appeal to his fairness and conscience will not sway him, boycott; we say that when labor has been oppressed, browbeaten and tyrannized, boycott; we say that when social and political conditions become so bad that ordinary remedial measures are fruitless, boycott; and finally we say, we have the right to boycott, and we propose to exercise that right.

"In the application of this right of boycott, to paraphrase the President, we propose to strive on and on.

"Respectfully submitted,

"Denis A. Hayes, Chairman: W. Alex. Vickery, Charles
729 Dold, D. F. Manning, M. Zuckekmann, Wm. Q. Sullivan,
Victor Altman, August Molter, Michael J. Hallinan,
Thomas L. Hughes, P. J. Jordan, H. A. Cooper, Louis Kemper, C.
W. Fry, James M. Lynch, Secretary;

"I move the adoption of the report of the committee as a whole.
(Seconded.) Motion carried.

"Vice-President MITCHELL. I take advantage of this occasion to record, as positively as I can, my complete concurrence in the declarations of the committee. I recognize that, at this time, every statement made by the representatives at this convention, and particularly by those who on next Monday must present themselves in court at Washington, is being scrutinized with the greatest care. I want the delegates to this convention, I want the people of the United States to know that, so far as I am concerned, I shall not speak defiantly, but, let the consequences be what it will, I shall not surrender any right guaranteed to me by the constitution of our country. I am not sure how much mental and physical suffering will be necessary to make me submit, but if I know myself, and I think I do, no amount of physical pain or mental suffering will persuade me that I have not the right to spend my money where I choose, the right to speak and print whatever I choose, being responsible under the law for the abuse of that right.

"Speaking generally of the boycott, it may be, if properly and advisedly used, one of the most humane and beneficial weapons in the hands of organized labor. Used ill-advisedly, it may prove a det-

730 riment to us, but whether it be a benefit or a detriment, each man for himself must determine where he is going to bestow his patronage. I deny most emphatically that any merchant

or any manufacturer has a property interest in my patronage. It is mine to withhold or bestow as suits my own pleasure, and any attempt through the subtleties of the law to take from me the absolute right to spend where I please my own money—any attempt to take from the people the right to spend where they please their own money—must be resisted at any cost and opposed to the very limit.

"Now, Mr. Chairman, this is the first time during this Convention that I have had anything to say about the proceedings in court at Washington. I have information that cognizance has been taken there of utterances by men on the floor of this Convention, and I want to go clearly on record so that no man may misunderstand my

attitude, and that no man, however, designing, may be able to distort my attitude. I propose in the future, as in the past, to exercise the right guaranteed me by the founders of our country; I propose—if I am sent to jail—when I come from there to declare again that I shall not, for myself, purchase any product of the Buck's Stove & Range Company. I make this declaration not to tickle the ear of any man; I make it solely that I may declare publicly the conviction that is within me."

731 Witness is asked if after hearing this statement read he says he had not been concerned at all in any boycott of the Buck's Stove & Range Co. and responds that he had done nothing in furtherance of the boycott against it and further testifies that if he presided at the Convention of the United Mine Workers of America and out the resolution, conscious of what he was doing and with full knowledge of it, he would have been concerned in a boycott.

Witness' attention is called to the following language:

732 "During the year 1907 a dispute arose between a manufacturing firm in St. Louis and its employes, who were members of their respective trade unions. Failing to adjust this controversy, the American Federation of Labor placed the name of this firm upon its we don't patronize list, whereupon the Supreme Court of the District of Columbia issued an injunction restraining the officers and members of the American Federation of Labor and of all organizations affiliated with it, from interfering in any way with the sale of the product manufactured by this company. As these products were sold extensively in mining communities, one of our local unions instructed its delegates to the annual convention of the United Mine Workers of 1908, to introduce a resolution placing the products of this firm upon the unfair list and providing that any member of the Miners' Union purchasing the product of the firm should be fined five dollars, failing to pay which he should be expelled from the union. As you know, I was at that time president of the United Mine Workers of America, and it was my duty to preside over the deliberations of the convention. This resolution was adopted without discussion and by unanimous vote. Some time thereafter, and following my retirement from the presidency of the United Mine Workers of America, I, along with Mr. Gompers and Mr. Morrison, was commanded by the Supreme Court of the District of Columbia to appear and show cause why we should not be adjudged guilty of contempt of court and punished therefor, the principal charge against me being that, as president of the Miners' Union and presiding officer of the convention which passed the resolution referred to above, I had violated the injunction and disregarded the order of the court.

733 used by him on April 13, 1911, and asked how he knew the Buck's Stove & Range Co. had a large sale in the mining sections, to which he responded that at the time he wrote this article on several occasions he had met Mr. Gardner, now President of the Buck's Stove & Range Co. who told him about the districts in which their sales were made and that they had a very large sale among the miners. Thinks that is the first information that came

to him directly. Perhaps it is stated in the petition but he does not remember that. Does not know if they make what is known as a poor man's stove. Understood that they claimed in their petition that the boycott was doing great injury to their Company and that they stated that they sought relief by coming to the Court. Does not deny their right to submit their case to the Court and bring him into it. Neither claimed nor exercised the right to dispute the injunction.

It is one of his contentions that a law should be passed giving the party charged with contempt of an injunction the right to trial by jury.

To the question whether, if the Supreme Court of the United States has now decided that a boycott is illegal, that it is within the power of a Court of Equity to enjoin every act done and every word spoken or written for the purpose of carrying on such a boycott, and that trial by jury of cases of contempt for the violation of an injunction cannot be made mandatory upon the courts by an act of Congress, whether there was any reason why he should not now abandon his teaching to his followers that it was their duty to resist and disobey said injunctions and his own declaration that

734 he should not hesitate to violate them, or say to the Court that he would henceforth discontinue them, the witness declined to make answer.

Thereupon the following ensued:

"The Court: Mr. Mitchell, the Court has attended with interest to the testimony which you have given and from which the Court is not reluctant to believe that it lies in your hands to bring good enlightenment and advancement, or, on the other hand, great evil, tribulations, and distress to your followers, according as the doctrines which you teach and which by teaching you persuade them to embrace, agree with the principles of law and the science of social government. Lest you be apprehensive of the purpose of the questions which the Court may direct to you, that purpose is in advance stated to be this: To evoke from you a final and sincere expression of your convictions at this time (in view of the decisions of this and other courts) upon the point of the obligation of the citizen to accord obedience and submission to the orders and the judgments of the judicial tribunals of the land which are erected and maintained by the people for the settlement of controversies between individuals.

You said, during your examination, that you, yourself had been a party to many injunction suits. Did you ever know any of those many injunction suits, the outcome of which was satisfactory to the defeated litigant?

Mr. MITCHELL: That is an inquiry?

The COURT: Yes.

Mr. MITCHELL: No; I have never known of any. They were always issued against the working men.

The COURT: Have you ever known any litigation, whether it be

concerning injunctions or otherwise, the outcome of which
735 was satisfactory to the defeated party?

Mr. MITCHELL: I do not know of—I have not discussed specific cases with anyone who has been defeated, but I assume that the person defeated is not satisfied.

The COURT: How can you reconcile a right for the disappointed litigant to accord obedience or not, as he may choose, to the decrees of the judicial tribunals, with the maintenance of the law by these tribunals? Do you know a way to reconcile that?

Mr. MITCHELL: I do not understand the inquiry, if your Honor please; I do not understand the statement.

The COURT: How can you reconcile the claims for a right in each disappointed litigant to obey or not the decrees of the court which has decided his cause, with the belief that the supremacy of the law can be maintained by those tribunals?

Mr. MITCHELL: I have not contended that the disappointed litigant has the right to disobey, at his will, the orders of the court. The contention I have made is that when an order of the court clearly invades the constitutional rights, those important constitutional guarantee of freedom of speech and freedom of the press, then the citizen, not in furtherance of dispute, but in furtherance of preserving those guarantees, is justified in disregarding the order of the lower court in that respect until such time as the highest court of the nation has passed judgment upon the principle in controversy. That is the contention I have made.

736 The COURT: What do you conceive to be the purpose of the people in establishing judicial tribunals for the settlement of controversies—that they shall settle them or not?

Mr. MITCHELL: That they shall settle them.

The COURT: Does not that mean of necessity the adherence to those decrees by the defeated litigant until reversed?

Mr. MITCHELL: If it involves, as I said—May I make a statement by way of reply?

The COURT: Yes.

Mr. MITCHELL: Except in equity cases, that is not required of the citizen. In the violation of a statute, as I understand the matter, the citizen may disregard the statute, of course at his own risk; but if the courts above have declared the law to be unconstitutional, then the person so disregarding the law may not be punished, and it is only in contempt proceedings that any claim has been made that the litigant may be punished for violation of the order of the court, even though the courts above may decide that no authority rests with the court to issue the injunction. I say that is the general principle that only applies to those in equity cases, as I understand it.

However, I do not contend, your Honor, that the citizen has a right to make his own choice as to whether he will obey orders of the Court or not. I do contend that where a great political question is at stake, a great question of human right, and in which it seems to clearly violate the Constitution or the provisions of the Consti-

737 tution, and to clearly invade the rights of the citizen, that the citizen must, as a duty, do all in his power to have corrected the wrong that he believes the court has done: to have corrected the mistake he believes the court has made; and in this case—addressing myself particularly to it, in order that you may understand better how I felt and how I feel—in this case it seems to me the Court did go so far beyond its right, that it so far set aside the Constitutional guarantees, that it was not only a right, but a duty to disagree with your Honor, and to proclaim to the world, first, that we believe if your Honor's decision were sustained by the Court above, legislation should be enacted then to restore to the people the guarantees of their liberties. Fortunately, as I understand it, in this case, the Court of Appeals did modify to some extent, this Court's view upon that specific question.

The COURT: Then, as your views now are, you limit the cases wherein you think disobedience is commendable and proper to those involving the violation of a constitutional right? Is that it?

Mr. MITCHELL: That now appears to me as being it; that is as far as I have thought out the matter.

The COURT: I suppose you would concede the same right to the other side of the question, if that side were defeated?

Mr. MITCHELL: I should claim absolutely no right, for myself or for my people that I would not willingly accord to any other side.

The COURT: I suppose so. I take it you regard the right of the laborer to seek and obtain and enjoy employment as a constitutional right?

Mr. MITCHELL: I do sir.

738 The COURT: Uninterfered with by the so-called black list which years ago was sometime undertaken?

Mr. MITCHELL: And is yet.

The COURT: Do you regard the black list as an interference with the constitutional liberty and freedom of the workman to seek and obtain employment?

Mr. MITCHELL: I think it is a very serious interference with his principles. I do not know whether it is an interference with his constitutional rights or not.

The COURT: Suppose such a man should seek to secure an injunction against a combination of employers, which injunction restrained them from black listing him and so publishing him; would you concede the right of those employers to disregard that injunction, and would you contend for that right in their behalf?

Mr. MITCHELL: I would concede whatever right I claimed for myself.

The COURT: I am asking specifically as to that.

Mr. MITCHELL: I would recognize—yes, I do not say I should contend for their rights. I should recognize their rights.

However, your Honor asks a question that is practically impossible of materialization. Important injunctions have never been issued to my knowledge, against associations of employers for black listing their workmen.

The COURT: They have never been refused, have they?

739 Mr. MITCHELL: I do not think they have ever been asked for. I do not think the working man would do that; it never occurred to their minds to apply for in injunction to restrain the employer, or to command the employer to give the workman employment, or to restrain them from refusing.

The COURT: You know very well the courts have sustained actions for damages against employers for black listing laborers, do you not?

Mr. MITCHELL: I do not know that they have.

The COURT: Do you not know of the case in the 109 Maryland, right next door to us here, decided in 1909, Willner against somebody?

Mr. MITCHELL: I am not familiar with it, no.

The COURT: Have you read the decision of the Supreme Court of the United States quoted from by Mr. Davenport?

Mr. MITCHELL: In this case?

The COURT: Yes.

Mr. MITCHELL: No, I have not read it with care. I doubt if I ever read it all before today. I read the newspaper accounts of it, and this morning I tried to read it all, but at a time when the opportunity was not good for understanding it.

The COURT: I commend to you its reading over-night, and invite any further expression of your views upon the points about which I have been just questioning you, when Court reconvenes.

740

FEBRUARY 10, 1912. (Page 1434.)

Witness has not been able to find the Resolution and has not been able to secure the proceedings, namely, the Resolution rescinding the action taken in the Convention of 1908 passing Resolution 73. Is handed copy of proceedings but fails to find it. His secretary informs him that she finds the recommendation of Mr. Ryan as Secretary-Treasurer to the Convention of 1909 that the Resolution of the 1908 Convention be reconsidered, but is unable to find any action upon that recommendation. Witness has evidently been in error in statement of his recollection that Ryan had made a motion from the floor. It seems he made a formal recommendation, but witness does not yet find the action of the Convention thereon.

So far the witness has been unable to find the action referred to in his testimony, which he qualified carefully saying that it was his recollection. It was not difficult for him to be confused. Thinks he was only two days in attendance at that Convention. Witness attended the convention at Toronto as a delegate from the United Mine Workers of America. Did not make a report to the Convention as delegate to the 28th Annual Convention of the American Federation of Labor.

Witness' name is signed but not necessarily without authority. The report of the delegate was prepared usually by the president of the organization. It is usual when the Convention meets for the one who prepared the report to call the delegates together and read it to them and if it meets with their approval then their names are attached.

Witness had retired from the Presidency at the time of this report, being that of the Toronto Convention. If the question has reference to a Convention after his retirement from the Presidency of the United Mine Workers of America then he would not have examined the report of the Committee because he had confidence in his associates. If during the time he was President then he would have known of it and would have attached his name to it.

Mr. Davenport offers in evidence the report to the Denver Convention of the delegates of the American Federation of Labor, to which Mr. Parker objects on the ground that it is not one of the charges made against the respondents and Mr. Davenport says it is not included in the Charges. Ruling on the offer was reserved.

Mr. Davenport under the foregoing offer presents the following report:

742 "Report of Delegates to the American Federation of Labor.

"Vice-President White, for the delegates, read the following report:

"To the Officers and Delegates of the Twentieth Convention, U. M. of A.:

"BROTHERS: We, your delegates of the Twenty-eighth Annual Convention of the American Federation of Labor, submit for your information and approval the following report:

"The Convention met in the Auditorium at Denver, Colorado, Monday morning, November 9, 1908.

"The convention was called to order by President Gompers, who was introduced by Fourth-Vice President Max Morris of the Retail Clerks' Organization.

"The session was opened with prayer by the Rev. Charles G. Williams. Governor Buchtel was then introduced by President Gompers, and the Governor in a few appropriate remarks addressed the delegates and extended to them a hearty welcome in the state of Colorado. He was followed by Major Speer, on behalf of the city of Denver, who also extended a very cordial welcome to the delegates.

"Mr. George Hally, President of the Colorado State Federation of Labor, and Mr. L. M. French, President of the Denver Trades and Labor Assembly, made very appropriate addresses of welcome, to all of which President Gompers responded in a pleasing and fitting manner.

"The report of the Credentials Committee shows that there were 308 delegates, representing 208 national and international unions, 24 State Federations, 55 National Labor Unions, 14 Trade and Labor Unions, and 6 fraternal organizations, making a total of 181 organizations represented, with a voting strength of 15,203 votes.

743 "The fraternal delegates present were John Wadsworth and J. H. Skinner, representing the British Trades Union Congress; P. M. Draper, representing Trades and Labor Congress of

Canada; Mrs. Raymond Robins, representing the National Women's Trade Union League; Rev. Charles Stelzle of New York, representing the Department of Church and Labor; Miss Anna Fitzgerald, representing the Women's International Union Label League, and George B. Lang, representing the Farmers' Educational and Co-operative Union.

"President Gompers' report to the convention reviewed the labor movement from practically every standpoint. His report showed that new charters had been issued during the year to two industrial departments, four state federations, seventy-three central bodies, one hundred local trade unions having no internationals and fifty-five federal labor unions.

"His report also showed that there were affiliated with the American Federation of Labor on September 30, 1908, 116 international unions, 2 industrial departments, 38 federations, 606 city central bodies and 583 local trades and federal labor unions.

"President Gompers' report reviewed the labor movement in Canada, Porto Rico, and also explained the movement of organizing the farmers of this country. His report also reviewed the attitude of the American Federation of Labor in reference to the Buck's Stove and Range Company, and the litigation growing out of that controversy. The President's report treated very extensively with the question of injunctions free speech and free press, and commented upon the Supreme Court's decision with reference to the Sherman anti-trust law and its application to labor unions. He also called attention to the necessity of securing legislation to amend the Sherman anti-trust law so that it would not include under its provisions labor unions, and also the necessity of having legislation enacted to prohibit the abuse of injunctions in labor disputes.

"Mr. Gompers' report also reviewed the attitude of the Executive Council in political affairs of the country.

"His report also called attention to the campaign of education going on all over the country in favor of the initiative and referendum, and that the prospects were favorable for having many of the states declare in favor of this principle. He also called attention to the splendid work being done by the labor press of the country in behalf of the labor movement.

"Secretary Morrison's report showed that the balance on hand October 1, 1907, was \$127,910.92; that the receipts for the year were \$207,655.23, making a total of \$335,565.25. The expenses for the year were \$193,937.36, and the balance on hand October 1, 1908, was \$138,627.89. The paid up membership affiliated with the American Federation of Labor at the close of the fiscal year 1908 was 1,586,885.

"Treasurer Lennon's report was practically a verification of the financial part of Secretary Morrison's report.

"President Gompers then appointed the various committees.

"The report of the Executive Council reviewed in detail the work of that body during the year, and explained to the Denver Convention the various jurisdiction disputes that exist between affiliated national and international unions. The Executive Council's report also called attention to its action with reference to its political

program and what has been done to have incorporated in the platforms of the different parties the declaration of principles of the American Federation of Labor.

Injunctions Against Workmen.

"We again urge the careful reading of this report and the statements under this head in particular. We endorse the statements therein made in full and in particular, and call attention to the fact that it is by assuming that business is property that the barest shadow of justification can be found for the acts of the judiciary on these lines.

"Business consists of a location, of stock and patronage.

"Location and stock are property; patronage is not.

"Patronage rests upon nothing except the good will of the patron.

"There can be no business without patronage; hence, business cannot be property.

745 "Courts used to be concerned, and justly so, with the preservation of property as such; not with the profitable or unprofitable use thereof.

"When courts shall have been compelled to retrace their steps back to this fundamental position, government by law and equal freedom will to this extent have been restored.

"Your committee again recommends that all candidates for legislative or judicial positions be carefully investigated as to their past acts and interrogated as to their position on this matter, before they be given any support, and, that those who from their actions or expressions are deemed unsound, be, regardless of any other question, repudiated."

Shall Injunctions Invade Free Speech and Free Press?

"We note and endorse the President's report upon this question. We desire again to call attention to the report upon the subject of injunctions made by the committee to the *Twentieth-seventh* Annual Convention of this body meeting at Norfolk, Va., and in addition we desire to quote, with your approval, the following from later documents issued by the Federation:

"We contend that equity, power and jurisdiction, discretionary government by the judiciary, for well-defined purposes, and within specific limitations, granted to the courts by the constitution, has been so extended that it is invading the field of government by law, and endangering individual liberty.

"As government by equity, personal government, advances, republican government, government by law, recedes.

"And further: 'Despotic power under the ermine is as dangerous as despotic power under the crown. They (the judges) cannot divest themselves of their humanity by putting on the judicial ermine any more than the King can divest himself of his by putting on the crown.'

"We affirm that government by law and government by injunction cannot exist together, and we again state that the usurpation

that undertakes to deprive us, as working people, of our rights as citizens, cannot and will not stop until it has invaded all fields of human activity and made the judiciary the irresponsible officer of all relations between employer and employee, buyer and seller, man and man.

746 "The President well says that it is now the American Federation of Labor and the American Federationist which are enjoined from the exercise of the right of free speech and the liberty of the press, and that in the future it may be some other publication. The American people must learn these facts in order that popular government may be preserved.

"Buck's Stove and Range Company Injunction.

"Under this heading the President makes a clear and comprehensive report of this injunction, stating what it forbids and what action has been taken with reference thereto. He reports upon the process for contempt of court, instituted against him, Vice-President Mitchell and Secretary Morrison. He further calls attention to the fact that under the injunction he is forbidden to make a report to this convention upon this subject. We urge upon all members of the labor movement and all friends of human liberty to read and digest the report upon this subject and the subjects allied thereto. We recommend that it be adopted, and that a vote of thanks be given to President Gompers for the splendid example he sets in giving this report and his willingness to take the consequences.

"Bill to Regulate Injunctions.

"The President under this heading submits for our further indorsement or such action as we shall deem proper, the Pearre bill. We recommend that it be re-indorsed.

"He further submits a copy of the British Trades Dispute Act, and calls attention to the fact that by this act the joint funds of the organized workers of Great Britain have been placed in proper security. We recommend that the Executive Council obtain competent legal advice upon the advisability or the necessity of inserting the principles contained in the Trades Dispute Act in either the Wilson (H. R. 2584) or the Pearre bill (H. R. 94).

747 "We further recommend that the Executive Council be instructed to confer with the representatives of other organizations, with a view of prevailing upon them to give their full and undivided support toward this important legislation.

"On motion the report of the committee was adopted, the vote being unanimous.

"Litigation Harassing Labor.

"We note what the President has to say upon this subject. We recommend its adoption. We further recommend that it be carefully read, and in addition we desire to call your attention to these significant words:

"If the situation is to become so acute let us personally as best we can, defend our rights before the courts, taking whatever consequences may ensue. For one, I can see no remedy for these outrageous proceedings, unless there shall be a quickening of the conscience of our judges or the relief which the Congress of our country can and should afford."

"Bearing this in mind your committee desires to state that whenever the courts issue any injunctions which undertake to regulate our personal relations either with our employer, or those from whom we — or may not purchase commodities, such courts are trespassing upon relations which are personal relations, and with which equity power has no concern; that these injunctions are destructive of our rights as citizens, as well as of popular government.

"And we further declare that we will exercise all the rights and privileges guaranteed to us by the constitution and laws of our country, and insist it is our duty to defend ourselves at all hazards, and we recommend that such be our action, taking whatever results may come.

"We further recommend that when cited to show cause why such injunctions should not be issued, we should make no defense which would entail any considerable cost, and we further recommend that when cited for contempt the proper policy is as outlined above. We further desire to warn our fellow unionists that testimony extorted under equity process may be partially used in a damage suit under the Sherman Anti-trust Law.

748 "However, your committee feels constrained to say that when blanket injunctions are applied for or issued by the courts against the members of unions for no other reason except that they are members of the unions, and these injunctions are applied for or issued solely for the purpose of intimidating the members, we believe that such legal advice and protection as may be necessary should be provided for them by the organizations in interest.

"Supreme Court Decision Extends Sherman Anti-Trust Law to Hatters and All Labor Organizations.

"We indorse all that the President has said upon this subject. We urge that it be studied; that each organization place itself, so far as it is able, in the Hatters' place in order that it may realize the terrible significance of this position.

"We recommend and urge upon all officials of labor organizations to study this question for themselves, with a view of bringing it in its nakedness before their members in order that each individual may fully appreciate its full meaning and the danger to which the organizations themselves, their individual members and their joint and individual property are exposed.

"On motion the report of the committee was adopted, the vote being unanimous.

"Bill Amending Sherman Anti-Trust Law.

"Under this heading the President reports upon the bill that was introduced in Congress to amend the Sherman anti-trust law, and the efforts that were put forth to have it enacted. Your committee recommends that the report be adopted and the bill approved, and the bill be urged in every way possible to its final passage.

"In addition to this, the Executive Council called attention to the labor conditions of Porto Rico with reference to the employment of women and children, and that a thorough investigation was to be made by the Government.

"Attention was also called to the necessity of having uniform laws enacted for the purpose of protecting human life. The
749 necessity of assisting in the crusade against tuberculosis was also referred to in the report. Old age pensions and the pension systems of foreign countries were also referred to. The one hundredth anniversary of Abraham Lincoln was mentioned, and the movement to have a fitting celebration upon that date was approved by the Executive Council, and Congress is urged to have the states declare that day a legal holiday.

"Fraternal Delegates John Wadsworth and J. H. Skinner of the British Trades Union Congress explained labor conditions in Great Britain, and the tendency of labor men of that country to take an active part in securing legislation to protect the rights of the laboring people.

"P. M. Draper, fraternal delegate from the Trades and Labor Congress of Canada, explained the situation in the country.

"On Thursday afternoon the Rev. Charles Stedle explained to the convention the relation of the Presbyterian Church and the labor unions, and the work that was being done to bring about a better understanding between the churches and the labor movement. He was followed by Mrs. Raymond Robins, who explained to the American Federation convention the work of the National Women's Trade Union League, and the necessity of everyone interested in the labor movement taking an active interest in the league work. She was followed by Miss Anna Fitzgerald of the Women's International Union Label League, who urged all the delegates to patronize only such products as bore the union label.

"Andrew Furness and James J. Kremer, fraternal delegates, representing the American Federation of Labor to the British Trade Union Congress, made splendid reports of the work of the British Trade Union Congress, and the progress of the movement generally in Europe. They were followed by Hugh Frayne, fraternal delegate to the Trades and Labor Congress of Canada.

"The following resolutions were adopted:

"To have book binding of public libraries done in the United States;

"To indorse the principle of civil service;

750 "To enact legislation to secure better pay and less hours for postal clerks;

"To restrict immigration by an illiteracy test;

"To indorse the jewelry worker's label;

"To have uniform laws to protect human life;

"To condemn the wanton destruction of fish in Alaska by the use of salmon traps;

"To have the Chinese Exclusion law include "Japanese and the terms extended to exclude from the United States and its insular territory all races native of Asia other than those exempted by the present terms of that act;

"To require by law that suitable quarters shall be furnished laboring men engaged in government or other construction work.

"The Executive Council, in its report to the convention, submitted an exhaustive statement covering political action. Printed report of the receipts and expenses of the political campaign fund can be had upon application at headquarters at Washington.

"Among other matters reported upon in the Executive Council report was a conference of representatives of label organizations, held in pursuance of the instructions of the Norfolk convention, in the interest of the union label. This conference decided to authorize the issuance of a Union Label Law Digest, covering the laws and court decisions for the protection of the Union labels, and also the basis upon which suits may be instituted before the courts for the protection of the rights of the organizations in their respective union labels. The expense of the publication of this digest will be shared pro rata by the label organizations.

"The convention endorsed the national movement for the conservation of natural resources, and approved the action of the Executive Council in authorizing the participation of the American Federation of Labor therein.

"The convention instructed the continuation of the distribution of anti-tuberculosis printed matter and recommended the fullest co-operation of all affiliated organizations in the efforts for the extermination of this disease.

"The subject of old age pensions received the consideration of the convention, in connection with which the Executive Council submitted a report of the existing legislation of European nations, providing for old age pensions, and the Executive Council was authorized to proceed with the effort to secure legislation along this line for the workers of this country.

"The subject of industrial education received the attention of the convention. The Executive Council had collected considerable data, which showed that there are two groups advocating industrial education—one whose policy will be of genuine service, the other being entirely inadequate and inimical from a trade union standpoint. It was decided that a committee of fifteen be appointed for further investigation and report to the next convention of the American Federation of Labor.

"The convention authorized the Executive Council to continue its efforts to protect the interests of the workers of our country against improper immigration, as well as for the furtherance of the interests of that class of immigrants who lawfully come to our shores.

"Among the resolutions adopted was one urging that the municipal, state and federal governments arrange to provide work on public works for the unemployed, and thus aid in the solution of this problem which will otherwise prove a menace to social order and good government.

"Provisions were made for the erection of an office building at Washington, D. C., for the headquarters of the American Federation of Labor.

"It was decided that the Congress of the United States and the legislatures of the several states be urged to declare the centennial of the birth of Abraham Lincoln, February 21, 1909, a legal holiday, and that it be so observed by all labor, wherever possible.

"Several jurisdiction disputes were amicably adjusted at this meeting and others were referred to the organizations affected, and, we learned since, settled by the parties interested, the details of which we are familiar with.

752 "The following officers and delegates were elected:

"President—Samuel Gompers.

"First Vice-President—James Duncan.

"Second Vice-President—John Mitchell.

"Third Vice-President—James O'Connell.

"Fourth Vice-President—Max Morris.

"Fifth Vice-President—D. A. Hayes.

"Sixth Vice-President—William D. Huber.

"Seventh Vice-President—Joseph F. Valentine.

"Eighth Vice-President—John R. Alpine.

"Secretary—Frank Morrison.

"Treasurer—John B. Lennon.

"Fraternal Delegates to Great Britain—John P. Frey, B. A. Larger.

"Fraternal Delegate to Canada—Jerome Jones.

"It was decided that President Gompers should be sent as special representative of the American Federation of Labor to the next meeting of the British Trades Congress.

"Toronto, Canada, was the city selected for the next convention.

"Respectfully submitted.

"T. L. Lewis, John P. White, W. D. Ryan, John Mitchell, W. B. Wilson, J. H. Walker, G. W. Savage, Delegates.

753 Redirect examination.

By Mr. PARKER:

"Q. I would like to ask this question. Did it not often happen in your experience as a presiding officer that your mind would be so occupied with some questions that reports and resolutions would have very little effect upon it, motions being put but without attempt to grasp their purpose and effect, as the duty of the Chairman was to preside, not to direct its course?"

To the foregoing question Mr. Davenport objected on the ground that it was leading and the Court sustained the objection upon that ground. Mr. Parker then and there excepted.

Examination by the COURT:

Witness said yesterday that so far as he was advised there continued no boycott of the Stove Co. after the injunction became effective. Understood that there was no boycott being prosecuted by any of the defendants in this case. Had no knowledge there was a boycott at all being prosecuted. So far as he knew there was no boycott being prosecuted by the labor press of the country. Of course his own reading of the labor press was necessarily limited.

Witness' attention is called to pages 41, 42, 43, and 44 of the pamphlet opinion of the Court handed to him which had been offered in evidence and to the reproduction on those pages and said he had never seen that pamphlet before. The Court called his attention to the heading of one of them in small type reading "It is unlawful for the American Federation of Labor to" and in large type "Boycott Buck's Stove and Ranges" and asked if he had known that the labor press throughout the country was continually and generally carrying that sort of production would he still think no boycott was being prosecuted and he responds "No, candidly if I had seen these I would have assumed that the person who wrote this was trying to further a boycott. However, I disclaim any knowledge or responsibility for it."

Witness is quite sure his associates in this case had no authority of or responsibility for it. This would seem to indicate
 754 in the witness' judgment that an attempt was being made by the writer of the circular to further a boycott. He does not recall having expressed a judgment at all as to what was the duty of any one within the court's jurisdiction. Is willing to say and does say without reservation that he regards it as a duty to obey the injunction so far as refraining from prosecuting a boycott was concerned. Does not want to be the judge of other men's acts.

"The COURT: I invite again and ask you, Mr. Mitchell, after reading, as I assume you have, the decision of the Supreme Court in the Buck's Stove & Range Company case, to express what your convictions are upon the point of the duty of citizens to obey decrees of the courts until they are set aside by some proceeding?"

Mr. MITCHELL: If your Honor please, I have read the decision of the Supreme Court during last evening, and I find that the Court has specifically declined to pass upon the constitutional issues which were involved in the controversy and in the defense made by the respondents in that case. Therefore, so far as the Constitutional issues are concerned, that of freedom of speech and that of freedom of the press, the Supreme Court has specifically refrained from passing an opinion.

As I have asserted, and asserted candidly and truthfully all the way through this case, I have not disregarded the injunction of the court. I have not assisted or aided in the prosecution of a boycott.

I should like the Court to believe the statements and the evidence I have given in this case. I should like the Court to acquit me, based purely on its belief in the truthfulness of my evidence. I do not want—Permit me to state it this way:

I am strongly disinclined to make any statement that would be

regarded as either directly or inferentially an acknowledgment that my testimony in this case is not the fact, and that I would seek relief from the charges preferred against me by any other process than my evidence, which I have given in the case. That is the way I feel about it, your Honor, and I should like very much, if I could, to have you understand how I feel about it. At any rate, I ask that your conclusions be reached based upon my evidence and the evidence in the case, and that you believe that my evidence has been given candidly and sincerely, and that my statement that I have not violated the injunction which was issued by Judge Gould is true; that is to say, I have not aided in any way in the furtherance of a boycott. I should like you to believe that those statements are true.

755 **THE COURT:** Has it occurred to you, Mr. Mitchell, that the evidence may very strongly indicate that, while you take here in the Court room the position that you have not violated the injunction, yet outside of the Court room and to the public at large, and particularly to your followers in your order, you have made them understand that you have violated the injunction—and this while you say to the Court that you do not regard yourself as having violated it? In other words, does it occur to you that there is strong evidence indicating a difference between the attitude which you present to the Court in your testimony and the attitude which you have presented to the public at large and to your followers in your speeches and in your writings? Do you believe, that your followers, the people to whom you have talked, and whom you have sought to influence by your addresses, as given in evidence, now regard you as having obeyed this injunction?

MR. MITCHELL: I think there is no doubt about it. I do not think my followers, if I have followers, believe I have disobeyed the injunction and sought to further a boycott.

My followers—let me say “men of labor,” not “my followers,” but the men who listen to what I say, know that I do not evade questions. They know that is not my policy.

Of course, your Honor’s attention has been concentrated upon my acts and my work simply as relating to this one question; but if your Honor were to examine my works and my words relating to all questions of public interest, if it were possible for your Honor to make those comparisons, you would soon satisfy yourself I am not in the habit of doing things by evasion, by subterfuge; that I have always been candid with my people when I state my position; that there is no misunderstanding as to what I mean, and that I say what I mean, so they cannot misunderstand me.

THE COURT: Do you desire the members of your organization to regard you as advising obedience or disobedience to injunctions restraining boycotts?

MR. MITCHELL: I do not grasp the question, your Honor.

THE STENOGRAPHER (reading):

“Do you desire the members of your organization to regard you as advising obedience or disobedience to injunctions, restrain- boycotts?”

Mr. MITCHELL: I want everyone to understand me as advising obedience to the law and obedience to the Court's orders. That I have always felt. I have never advised to the contrary.

I do not want to be misunderstood. I speak for myself now. I want my followers to understand that I shall contend for such political reforms and such reforms in judicial procedure as will secure, beyond question, the rights to the people that are guaranteed
756 in the Constitution of the country.

I do not want the Court—I would not for the world have the Court release me under the impression that I am departing from my advocacy at all of those fundamental reforms. I have read carefully the first amendment to the Constitution of the United States. The construction of that amendment was involved in this Court's procedure, in the case preceding this one. I cannot separate the guaranty as to freedom of speech and freedom of the press from the guarantee in the same amendment of freedom of conscience, the right to worship God according to the dictates of one's own conscience; and I say if the Court below—or whatever the terms are for the Court below the Supreme Court of the United States—were to issue an injunction that directly or indirectly invaded the freedom of my conscience, in my religion, I would be required to disobey the order of the Court, or disobey the laws of my religion. I should continue to worship according to the dictates of my own conscience.

If the Court were to say to me I do not have the right to make political speeches advocating judicial and legislative reforms, I would feel under those circumstances that my highest duty to the country, my highest duty to my fellows, would require that I continue to exercise my rights and make my political speeches.

So I am trying to separate the thoughts that these are the things I am contending for. I am not asking the right to go and sneak around behind the Court's back and try to escape responsibility by subterfuge. That I should not do.

The COURT: Nobody has even suggested that the right to that kind of discussion does not belong to every citizen. There is no such question as that involved in this case and never was. The right of citizens to discuss matters of political reform, and the right of citizens to discuss the merits and rightness of legal decisions or opinions are questions neither of which were ever in this case.

Mr. MITCHELL: I understand, your Honor, that in this case evidence is submitted to the Court that men, defendants in this case have, while making political speeches, purely political speeches, violated the order of the Court because in those speeches they have used, as illustrations of the wrongs they sought to correct, the quarrel between the Buck's Stove & Range Company and its employes.

The COURT: Those speeches were not offered in evidence for a purpose such as that. Those speeches were offered in evidence to show that on certain occasions, in public utterances, no matter when or where, they had used language which forwarded the boycott, and with the purpose of forwarding the boycott. That is the only theory upon which those speeches were introduced.

Mr. MITCHELL: My understanding was that this language referring to the Buck's Stove & Range Company was used by men on the political platform, taking part in a campaign and that because, in the course of their addresses, reference was made by way of illustration to the controversy between the Buck's Stove & Range Company and its employes, that constituted, in the opinion of the Committee, a violation of the Court's injunction.

I understood, too, that your Honor, in your decision sentencing Mr. Gompers, Mr. Morrison and myself to prison, employed the language that while the Constitution did prohibit Congress from abridging freedom of speech—I may not use the right word "abridging"—it did not deny that right to the Court. That was my understanding of the language employed by the Court. From that language of course I thoroughly dissent, if I have correctly interpreted what the Court said.

The COURT: The proposition is well understood by the Court, and ought to be equally well understood by lawyers, and supposedly by everybody else, that there is no power anywhere to prevent discussion or criticism, except so far as either that discussion or criticism, may inflict a wrong and injury upon the rights of another.

The Court is of opinion that everybody knew, as the Court knew, that there was no power to prohibit political discussion, as such; that everybody understood the only purpose of the committee in directing attention to these speeches was to show that in those speeches, in a subterranean way, statements were inserted for the purpose of practically saying to the hearers of the speakers, "prosecute and continue this boycott against the Buck's Stove & Range Company." That is the only theory upon which the speeches were offered or heard in evidence.

How can we discriminate between a dozen men coming privately together in a room and mutually counseling one another to prosecute a boycott, and the man standing in the open upon a platform and addressing hundreds and thousands in the same words, advising them and inciting them to prosecute a boycott? Is there any difference in principle?

Mr. MITCHELL: I do not understand that that has been done.

The COURT: That is the only theory upon which this prosecution ever stood.

Mr. MITCHELL: Then, your Honor, I think the prosecution has been based upon a mistaken information or deductions that were not justified by the facts in the case.

The COURT: But you see that these very publications to which I have called your attention, in the pamphlet which was handed to you, are essentially the result of the very dissertations which the American Federationist published. Do they not show that on their face, in the pamphlet which was handed to you by the Court?

758 Mr. MITCHELL: No, I am not willing to agree that they were the result of discussions by the American Federation of Labor. If your Honor please, there is in the next—

The COURT (interposing): Look at the first one. I do not know whether you looked at the first one.

Mr. MITCHELL: I have seen just such advertisements as these for a great many years, and in cases where there was no great public discussion.

The COURT: I do not mean that one at which you are now looking. I mean the first one which appears of those to which I called your attention.

Mr. MITCHELL: Yes. Where there was no great public question or dispute between employers and the workmen, I have seen just such statements published by the organizations, not only without any action on the part of the American Federation of Labor, but without any general discussion. The working men of the country have come to feel that when an injunction is issued in a dispute between working men and employers, the working men are being placed at a disadvantage as against the employer, and the issuance of the injunction itself often suggests to men's minds the fact that there is a dispute between working men and employers; and quite naturally and without any suggestion from officers of their unions, they refrain from purchasing the products of the firm that is having this dispute with employes.

The COURT: How can these labor journals—and I use that term, because they themselves employ it—publications be advised of the existence of and how are they advised of the existence of a boycott by the American Federation of Labor except through the American Federationist? Is not that the organ which announces it?

Mr. MITCHELL: That was the way they announced it before the injunction went into effect, yes sir.

The COURT: But does not one of these fac simile reproductions to which your attention has been called show upon its face a boycott by the American Federation of Labor after the injunction? Does it not use those very words?

Mr. MITCHELL: I say that it indicated that. Prior to the issuance of the injunction on the American Federation of Labor, it endorsed a boycott on the Buck's Stove & Range Company; but when the American Federation of Labor discontinued its boycott in accordance with the ruling or order of the Court, then the fact that some other publication in some other part of the country had referred to something the American Federation of Labor was doing prior to the issuance of the injunction should not or would not, in my judgment, in any way place responsibility upon the American Federation of Labor.

The COURT: Note the language of each of these productions in this respect: "Justice Gould", and so forth. Do you see that part of it in small type?

Mr. MITCHELL: Yes sir.

The COURT: Has not that very language been read in these proceedings from the American Federationist?

Mr. MITCHELL: I do not recall it; I do not remember it.

The COURT: Is my recollection clear on that point, Mr. Davenport, that that language was adopted from some page or part of the American Federationist?

Mr. DAVENPORT: The first appearance I noted was in the United

Mine Worker's Journal, of which Mr. Mitchell was the publisher—or was at that time; that is, he was one of the members of the Executive Council. They adopted it from some other paper and suggested that that was a very cute way of bringing the matter to the attention of the Committee. I will call your Honor's attention in a moment, if need be, to the particular part. I am quite sure in the former charges it was so stated.

I call your Honor's attention to part of the charges to which Mr. Mitchell made answer. I will read to your Honor from the September, 1908, Federationist, reading from page 684, charge XVIII, as follows:

"The said John Mitchell, as set out in paragraph IV of the original bill in this cause, is a Vice President and a member of the Executive Council of the defendants, American Federation of Labor. Until the 1st day of April, A. D. 1908, and for many years prior thereto, he was also President of the United Mine Workers of America, one of the subordinate National and International Unions of the Defendant, American Federation of Labor, referred to in Paragraph IV."

Passing on from that point to a later point in the same charge, I read as follows:

"And the said John Mitchell also caused or permitted the following to be published on the front page of the issue of the said United Mine Workers' Journal on the 9th day of January, A. D., 1908, as will be seen by reference to a copy of said issue herewith filed, marked Petitioner's Exhibit No. 3, and prayed to be taken and read as a part of this petition:

"Unlawful Boycott.

"Our readers should govern themselves accordingly and allow all to live unmolested.

"Here is something clever and cute from the Galesburg Labor News:

760 "Whether or not the manufacturers' Association, who were behind the Buck's Stove & Range Company in instigating the suit, will accomplish their desired results, is difficult to say. Trades Unionists will fail to see wherein they will. For no power on earth can compel a man to buy something he does not want to, and an announcement something on this order is enough to indicate to a union man what not to buy;

"It is unlawful for the American Federation of Labor to boycott Buck's Stoves and Ranges."

Mr. PARKER (interposing): I object to the further reading, your Honor, on the ground that while this was one of the charges, which was made against Mr. Mitchell on the other proceedings, it is not made a charge against him here.

Mr. DAVENPORT: That is in evidence, your Honor. It was published in the American Federationist for September, 1908.

The COURT: That is the answer to my inquiry exactly. That is the very thing shown the witness.

Mr. DAVENPORT: If the gentleman objects to my reading it, I will pass it to your Honor.

The COURT: I am inquiring with the principal purpose of bringing the mind of the witness to this point.

Mr. DAVENPORT: I will finish my reading, then:

"Justice Gould, in the Equity Court of the District of Columbia, on December 13th, handed down a decision granting the Company a temporary injunction preventing the Federation from publishing this firm as unfair to organized labor."

"The above could hardly be construed to conflict with the law, since it is a statement of facts. A funny thing about this case is that the boycott has been on this firm for more than a year. Now the unions have their attention directed to it for fair."

The COURT: Let me see that. (A copy of the September, 1908, American Federationist was thereupon handed to the Court.)

Mr. PARKER: If your Honor please, I objected to his reading. I did not catch your Honor's ruling.

The COURT: It was in answer to the inquiry of the Court. I understood the witness to say that he understood there existed no suggestions in the American Federationist—

Mr. PARKER (interposing): That is a mere printing, as your Honor knows, or can see by looking at it, of a copy of the petition. That does not furnish proof of the facts alleged in it.

The COURT: Certainly not. I am not assuming to interrogate this witness in an effort to prove anything against him. I have already indicated that to him.

Mr. PARKER: You allow it, then?

Mr. DARLINGTON: It is already in, your Honor.

The COURT: It is already in evidence.

Mr. PARKER: It is not in evidence as evidence in this case. I take it, other than the fact that it was published in the American Federationist. Reading it in now, as Mr. Davenport proposes to read it, will compel the doing of the very things which, in the other case, prevented them from doing what they desired, and that is we will prove that Mr. Mitchell had nothing whatever to do with the publication of that or any of these articles. We can take the time to do it, but why compel us to do it when they abandoned it when they made this report to your Honor?

The COURT: Nobody is assuming that he has—

Mr. PARKER (interposing): That is what they will argue, as you can see very plainly. They will compel us to open this up again and go into this subject which they abandoned when they opened this proceeding.

The COURT: It may be understood, if it is not already in evidence, that from the incident which invoked a reference to it, which was the inquiry by the Court, and from that incident alone, it will not be received as evidence against any of the defendants.

I was concerned in an effort, when I put the inquiry, to bring to the attention of the witness that which, from his statement, I understood he has had no knowledge of before, and that was the dissemination of this sort of literature, and what, if anything, there was in the Federationist that might have been responsible

for it; not that I am attempting to show that he did know, but on the theory that he did not know about these things.

Mr. MITCHELL: If your Honor please, Mr. Davenport, in calling your attention to the fact that there was published in the United Mine Workers' Journal in January, 1908, a statement similar in import to one of these, should have also called your attention, and I think it was but just for Mr. Davenport to also say that this occurred at a time when I was ill and away from my regular work; that I was then in that health resort in Missouri. I think that ought to go along with the statements in order that your Honor may understand my entire absence of knowledge of it or responsibility for it. I have never seen this article in the United Mine Workers' Journal until Mr. Davenport called my attention to it in the examination in the last case.

The COURT: The Court has already indicated that the questions which have been directed to the witness on this line are directed upon the theory that he was ignorant of that which existed. Upon that,

762 the Court predicates this question, whether the witness is prepared to regard it as fair to the members of his order, to say nothing of fairness to the judicial tribunals of his country, for him to inculcate into the members of his order the belief that the finding of the Court of his guilt on a prior occasion, based largely upon the presence of his own name as a signature to literature which, in the judgment of the Court, offended the terms of the injunction, to place a responsibility upon the Court which really belonged on the witness when, as he now says, he had withheld from the Court the very evidence which he thought would establish his innocence and permitted the Court to accept his silence and his failure to deny the authenticity of his signature as evidence that he had actually appended his signature to the documents.

Do you, Mr. Mitchell, think that is fair to your own people, in inculcating in them the opinions which you want them to hold of the Courts?

Mr. PARKER: I do not think the Court ought to put that question in that form.

I might say, your Honor, in passing, that it did not appear from the opinion which you wrote that he would have escaped censure from your Honor, even though his signature had not been attached to the original appeal. He has explained here that he did not sign it, which is perfectly apparent, that he did not sign it; but he has not said here that he withheld information on the subject for the purpose of deceiving the Court. I think at the moment the fact was that he did not realize that the urgent appeal—and no more, I think, did some of the others regard that urgent appeal—to which his signature was attached, was of importance until after he read your Honor's decision. They supposed it was a mere appeal for funds, and that it could not be construed as anything else. It was simply not denied; that is all.

The COURT: The Court has no questions to propound to Mr. Mitchell to which he, either directly, himself, or through his counsel, interposes an objection.

The Court is desirous to afford to Mr. Mitchell the fullest and freest opportunity to express his innermost and sincere convictions upon the vital points upon which this proceeding was originally founded, and upon which it is now proceeding. If the testimony of other witnesses is to be accepted—that Mr. Mitchell was advised by counsel to disobey this order—that is the most dangerous and destructive view of the law that ever emanated from the mouth of counsel. The Court is no more than undertaking to give him an opportunity to express not only his dissent from that advice, if he feels it or from any position in which either direct or indirect, or documentary or oral evidence may have placed him, or may have seemed to have placed him, only to evoke from him what may be his final and ultimate judgment upon the point and the single point, whether the judicial tribunals of the land are to be despised and reviled, or their judgments respected and adhered to.

In view of the objection, and in view of what the Court has now responded in answer to the objection it is entirely with Mr. 763 Mitchell and his counsel whether he shall answer any further questions.

Mr. MITCHELL: If your Honor please, my choice is that I shall either be vindicated or condemned based upon the evidence now submitted in the case.

Redirect examination.

By Mr. PARKER:

Witness' only connection with the United Mine Worker's Journal was that of being a member of the Executive Board under whose auspices it was published. Witness' attention being invited to page 686 of the September, 1908, *Federationist*, and that the article referred to by Mr. Davenport, beginning as follows: "And the said John Mitchell also caused or permitted the following to be published on the front page of an issue of the said United Mine Workers' Journal on the 9th day of January A. D. 1908," says that he was not responsible for that publication and took no part in it, and so far as he recollects had not seen or heard of it until the contempt proceedings were instituted.

Recross-examination:

Witness appointed the editor of that paper. Has no recollection of any contention as to his right to appoint. The editor 764 was appointed 6 or 7 years prior to the time this publication was made and continued as long as witness was president without reappointment. When witness' successor was chosen he ceased to be the editor. It would have been in the power of the President to remove him with the consent of the Executive Board. Was greatly interested in the affairs of the United Mine Workers. It had been for ten years his life work. He had sacrificed his health in promoting their cause and was advised by his physicians that his illness was largely due to his efforts in their behalf.

He wants the Court to understand that he was not a printer or

publisher and that in selecting an editor they sought to secure a man who was a publisher and a printer and upon the recommendation of one of their officers secured a man who had had experience and he was put in the office of editor. Witness exercised no direction or supervision over his work, because while intensely interested in the development of the United Mine Workers he took little interest in such details as supervising the publication other than the employment of a man in whom he and his associates had confidence. He was entrusted with the work of properly editing the Journal. If it was forwarded to him when he was ill he cannot recollect it. Thinks he did not examine it.

Has no recollection of seeing an issue of the Journal dated January 9, 1908. Thinks it probable that he did not see it at all at that time.

Mr. Davenport offers in evidence from said paper the following:

765

"Unlawful Boycott.

Our Readers Should Govern Themselves Accordingly and Allow
All to Live Unmolested.

"Here is something clever and cute from the Galesburg Labor News:

"Whether or not the Manufacturers' Association, who were behind the Buck's Stove & Range Company in instigating the suit will accomplish their desired results is difficult to say. Trades unionists fail to see wherein they will. For no power on earth can compel a man to buy something he does not want to, and an announcement something on this order is enough to indicate to a union man what not to buy:

"It is unlawful for the American Federation of Labor to boycott Buck's Stoves and Ranges.

"Justice Gould, in the Equity Court of the District of Columbia, on December 17, handed down a decision granting the company a temporary injunction preventing the Federation from publishing this firm as unfair to organized labor.

"The above could hardly be constructed to conflict with the law, since it is a statement of facts.

"A funny thing about this case is that the boycott has been on this firm for more than a year. Now, the unions have their attention directed to it for fair."

766

To the foregoing offer Mr. Parker objected and the ruling was reserved.

Regularly the Journal was delivered from the office of the editor to the office of the President. Witness spent a large part of his time travelling about the country, hence assumes he did not read all the copies of it. At that time the issue was published he was at Excelsior Springs trying to recoup my strength preparing for a Convention of the United Mine Workers of America. Had pre-

pared at that time as best he could the report made to the Convention of the United Mine Workers. Did not take any steps to advise or caution or prevent the editor from doing the things forbidden by the injunction.

His attention was not called before he became ill to what the paper was saying about the decision of the Court or what should be done with it. Never saw that.

When he returned to Indianapolis from Excelsior Springs was not in condition to read the daily issues or the regular issues of the United Mine Workers' Journal during the year 1908.

He retired from the Presidency the 31st of March and left Indianapolis. At the conclusion of the Convention again went away from Indianapolis to a health resort and all the time between the adjournment and the expiration of his term as President was very ill at the hospital, then in Indianapolis, or devoting his time in the effort to bring about a settlement of the wage scale with the mine owners. Cannot recall giving his attention or reading the issues of the United Mine Workers' Journal. The year 1908 was rather a strenuous year.

At this point the Court remarked:

767 "The COURT: Mr. Mitchell, the Court strongly recommends that you consider again the propriety of acquainting the Court, before these proceedings close, with your conviction whether you ought and whether you expect hereafter to lend adherence to the decrees of the judicial tribunals of the land, in matters committed by law to their jurisdiction and power.

You are free, at any time before these proceedings close, to give expression to the Court, either orally, or by written communication, upon this point. You need not make any response at this time.

MR. MITCHELL: May I ask, if I decide to make a statement, and it is made in writing, whether it will become a part of the record?

The COURT: If you so desire.

768 MR. PARKER: It has been many times held in the United States Supreme Court, and that too on a writ of habeas corpus, that where the Court makes an order beyond its power, an order in excess of its power, that part of the order need not be obeyed; but of course I agree with you, not if errors or not if mistakes are made, but when the Court does make an order which offends against the Constitution, so it is void as to that part of it.

It has never yet been determined—and this is a question that is open,—whether the Court will treat an order such as this precisely as it treats a statute which is enacted by another department of the Government. Where a statute is passed, some part of which is valid and some part of which is void, because it offends against the Constitution, as your Honor well knows sometimes they eliminate the void part and say that which remains is proper, and they do it upon the theory that that which remains practically presents the scheme which the legislature had in view.

But if, on the other hand, they are so interwoven, the void parts with the other, they treat the whole statute as void, and I have never yet been able to see, your Honor, any reason why the Court's

decree should be and why it should treat its decree as on any different basis than it treats a statute passed by another department of the Government, and why, if its decree contains void features and otherwise, it should not all stand or fall as it may be separated or not.

769 The COURT: Let us not bring into the case questions which it does not present. I thought it had already been sufficiently expressed and announced by the Court that this case presents no such question, and never has. It has been adjudged in this case that the injunction was intended to prevent a boycott; that the proceedings in contempt are based solely and entirely upon the claim of a violation of the injunction by the continuing of an existing boycott in defiance of the injunction; and however else it may be understood, the proceeding now before the bar is understood by the Court to present only charges for violating the injunction of the prosecution of a boycott, and not as charging any of these respondents or calling upon any of them to answer for language, either written or oral, pertaining to any other subject or discourse, save that single subject and the isolated consideration whether that language, written or oral, was written or spoken for the distinct purpose of forwarding a boycott.

"That is all these proceedings present, and that is all the question that is in them. That is all the kind of an injunction the Court has in mind, in putting the recommendation it has to put to Mr. Mitchell.

770 To the foregoing recommendation of the Court made before the proceedings closed, Mr. Mitchell made the following reply:

771 Copy.

John Mitchell, 3 Claremont Avenue.

MOUNT VERNON, N. Y., *February 17, 1912.*

Hon. Daniel Thew Wright, Associate Justice Supreme Court of the District of Columbia, Washington, D. C.

SIR: At the close my cross examination in the contempt proceedings instituted against Mr. Gompers, Mr. Morrison, and me the Court stated that I was free, at any time before these proceedings close, to give expression to the Court, either orally or in written communication, upon the subject of the following recommendation:

"The Court strongly recommends that you consider again the propriety of acquainting the Court, before these proceedings close, with your conviction whether you ought and whether you expect hereafter to lend adherence to the decrees of the judicial tribunals of the land in matters committed by law to their jurisdiction and power."

I have given the Court's recommendation careful thought and serious consideration, as a result of which I desire to say that I believe a statement by me that I "expect hereafter to lend adherence to the decrees of the judicial tribunals of the land" would be subject

to no other interpretation than that I had heretofore failed or refused to comply with the lawful decrees of the courts and that my evidence in this proceeding was not truthful and sincere and in keeping with the facts in the case. I am not willing to make any statement that would impugn my own testimony. I am not willing by any device or subterfuge to attempt to deceive the Court or secure an acquittal by any other means than those of the evidence and the truthfulness of my testimony.

Indeed, I should feel more contentment if convicted conscious of the rectitude of my course and the truthfulness of my evidence, than if acquitted on any other ground than the facts as they have been presented to the Court and the law as it has been enunciated by the higher tribunals.

* Yours respectfully,
(Signed)

JOHN MITCHELL.

773

Page 1490.

FRANK MORRISON, being first duly sworn, on oath said:

Direct examination:

He is Secretary of the American Federation of Labor and one of its Executive Council.

Mr. Parker offered in evidence letter of April 16th referred to on page 631 of the minutes, the amount of its circulation being 25,700 copies to the best of witness' recollection, to the introduction of which Mr. Davenport objected; and the ruling was reserved, the paper so offered being as follows:

774

American Federation of Labor.

Executive Council: President, Samuel Gompers; Secretary, Frank Morrison; Treasurer, John B. Lennon, Bloomington, Ill.

First Vice-President, James Duncan, Hancock Building, Quincy, Mass.

Second Vice-President, John Mitchell, 1111 State Life Bldg., Indianapolis, Ind.

Third Vice-President, James O'Connell, 402-407 McGill Building, Washington, D. C.

Fourth Vice-President, Max Morris, P. O. Box 1581, Denver, Colo.

Fifth Vice-President, D. A. Hayes, 930 Witherspoon Bldg., Philadelphia, Pa.

Sixth Vice-President, Daniel J. Keefe, 407-408 Elks' Temple Bldg., Detroit, Mich.

Seventh Vice-President, William D. Hunter, State Life Bldg., Indianapolis, Ind.

Eighth Vice-President, Jos. F. Valentine, Commercial Tribune Bldg., Cleveland, Ohio.

Long Distance Telephone, Main 3871-2.

Cable Address, 'AFEL'

423-425 G St., N. W.,
WASHINGTON, D. C., April 16, 1908.

To Secretaries of all Local, Greeting:

You have already received a copy of the "Protest to Congress" and the "Address to Workers". Enclosed you will find a copy of
775 the preambles and resolution suitable for consideration and adoption at your local union meeting. These resolutions are submitted in the form of a suggestion. It is not essential that these resolutions shall be adopted just as presented; they are, as already stated, suggested. If your union cares to conform to what you believe best, you are undoubtedly privileged so to do, so long as they conform to the general policy outlined.

You will also find enclosed a form of letter, which should be used substantially in transmitting a copy of the enclosed resolutions to each of the United States Senators from your State, as well as to the Member or Members of Congress from your district or districts. You should enclose a copy of the resolutions adapted with each of your letters.

In addition, copies of the resolutions and of the form of letter are enclosed for your members and friends, to be signed and forwarded by them individually.

Each Local union should adopt and transmit these resolutions and letters to the two United States Senators of your State and the Congressmen of your District. Further, each local union should appoint committees to prevail upon each individual member, and upon friends and sympathizers, to each of them send a copy of the letter and of the resolutions to each of the two Senators and to their respective Member of Congress.

Let us all unite in a great concentrated effort upon this work. Let us be faithful to each other, as well as to ourselves, and we shall accomplish the great work it is our duty and mission to fulfill.

Do not postpone or neglect to do your whole duty now. Aspirants for political office, whether for President, Representative, Senator, or others, must respond to the reasonable demand of the toilers and their friends, if we but show that we are persistent and insistent.

Act at once. If necessary call a special meeting.

Faternally yours,

SAMUEL GOMPERS,
President;
JAMES DUNCAN,
First Vice-President;
JOHN MITCHELL,
Second Vice-President;
JAMES O'CONNELL,
Third Vice-President;
MAX MORRIS,
Fourth Vice-President;
D. A. HAYES,
Fifth Vice-President;

DANIEL J. KEEFE,
Sixth Vice-President;
 WM. D. HUBER,
Seventh Vice-President;
 JOS. F. VALENTINE,
Eighth Vice-President;
 JOHN B. LENNON,
Treasurer;

Executive Council American Federation of Labor.

Attest:

FRANK MORRISON, *Secretary.*

To the foregoing offer Mr. Davenport objected and the objection was reserved.

Mr. Parker next offered in evidence the protest to Congress referred to in the last paper offered which protest reads as follows:

777 60th Congress, 1st Session.

Senate Document, No. 400.

Memorial of International and National Trade and Labor Unions.

Memorial of the International and National Trade and Labor Unions Remonstrating Against the Inaction of Congress in the Matter of Legislation in the Interest of Organized Labor and Urging the Necessity for Immediate Action for Relief from the Results to Come from the Literal Enforcement of the Sherman Anti-Trust Law.

March 20, 1908.—Referred to the Committee on the Judiciary and ordered to be printed.

Labor's Protest to Congress.

American Federation of Labor.

WASHINGTON, D. C., *March 19, 1908.*

We, the official representatives of the national and international trade and labor unions and organization of farmers, in national conference assembled, in the District of Columbia, for the purpose of considering and taking action deemed necessary to meet the situation in which the working people of our country are placed by recent decisions of the courts, now appear before Congress to voice the earnest and emphatic protest of the workers of the country against the indifference, if not actual hostility, which Congress has shown toward the reasonable and righteous measures proposed by the workers for the safeguarding of their rights and interests.

In the name of labor we now urge upon Congress the necessity for immediate action for relief from the most grave and momentous situation which has ever confronted the working people of this country. This crisis has been brought about by the application

by the Supreme Court of the United States of the Sherman anti-trust law to the workers both organized and in their individual capacity.

Labor and the people generally look askance at the invasion of the court upon the prerogatives of the law-making and executive departments of our Government.

The workers feel that Congress itself must share our chagrin and sense of injustice when the courts exhibit an utter disregard for the real intent and purpose of laws enacted to safeguard and protect the workers in the exercise of their normal activities. There is something ominous in the ironic manner in which the courts guarantee to workers:

The "right" to be maimed and killed without liability to the employer;

The "right" to be discharged for belonging to a union;

The "right" to work as many hours as employers please and under any conditions which they may impose.

Labor is justly indignant at the bestowal or guaranteeing of these worthless and academic "rights" by the courts, which in the same breath deny and forbid to the workers the practical and necessary protection of laws which define and safeguard their rights and liberties and the exercise of them individually or in association.

The most recent perversion of the intent of a law by the judiciary has been the Supreme Court decision in the *Hatters' case*, by which the Sherman antitrust law has been made to apply to labor, although it was an accepted fact that Congress did not intend the law to so apply and might even have specifically exempted labor but for the fear that the Supreme Court might construe such an affirmative provision to be unconstitutional.

The workers earnestly urge Congress to cooperate with them in the upbuilding and educating of a public sentiment which will confine the judiciary to its proper function, which is certainly not that of placing a construction upon a law the very opposite of the plain intent of Congress, thus rendering worthless even the very moderate efforts which Congress has so far put forth to define the status of the most important, numerous, and patriotic of our people—the wage-workers, the producers of all wealth.

We contend that equity, power, and jurisdiction, discretionary government by the judiciary for well-defined purposes and within specific limitations, granted to the courts by the Constitution, has been so extended that it is invading the field of government by law and endangering individual liberty.

As government by equity, personal government, advances, republican government, government by law, recedes.

We favor enactment of laws which shall restrict the jurisdiction of courts of equity to property and property rights and shall so define property and property rights that neither directly nor indirectly shall there be held to be any property or property rights in the labor or labor power of any person or persons.

The feeling of restless apprehension with which the workers view the apathy of Congress is accentuated by the recent decision of the Supreme Court.

By the wrongful application of the injunction by the lower courts the workers have been forbidden the right of free press and free speech, and the Supreme Court in the *Hatters' case*, while not directly prohibiting the exercise of these rights, yet so applies the Sherman law to labor that acts involving the use of free press and free speech, and hitherto assumed to be lawful, now become evidence upon which triple damages may be collected and fine and imprisonment added as a part of the penalty.

Indeed, the decision goes so far as to hold the agreements of unions with employers, to maintain industrial peace, to be "conspiracies" and the evidence of unlawful combinations in restraint of trade and commerce, thus effectually throttling labor by penalizing as criminal the exercise of its normal, peaceful rights and activities. The fact that these acts are in reality making for the uplift and the betterment of civilization as a whole does not seem to be understood or appreciated by the courts. The workers hope for a broader and more intelligent appreciation from Congress.

It is not necessary here to enter into a detailed review of this decision.

The workers ask from Congress the relief which it alone can give from the injustice which will surely result from the literal enforcement of the Sherman antitrust law as interpreted by this decision. The speedy enactment of labor's proposed amendment to the Sherman antitrust law will do much to restore the rights from which the toilers have been shorn.

We submit for consideration, and trust the same will be enacted, two provisions amendatory of the Sherman antitrust law, which originally were a part of the bill during the stages of its consideration by the Senate and before its final passage, and which are substantially as follows:

That nothing in said act (Sherman antitrust law) or in this act is intended nor shall any provision thereof hereafter be enforced so as to apply to organizations or associations not for profit and without capital stock, nor to the members of such organizations or associations.

That nothing in said act (Sherman antitrust law) or in this act is intended nor shall any provision thereof hereafter be enforced so as to apply to any arrangements, agreements or combinations among persons engaged in agriculture, or horticulture made with a view of enhancing the price of their own agricultural or horticultural products.

It is clearly an unwarranted assumption on the part of the courts or others to place the voluntary associations of the workers in the same category as trusts and corporations owning stock and organized for profit.

On the one hand, we have the trusts and corporations dealing with purely material things, and mostly with the inanimate products of labor. On the other hand, there are the workers whose labor power is part of their very lives and beings, and which can not be differentiated from their ownership in and of themselves.

The effort to categorically place the workers in the same position as those who deal in the products of labor of others is the failure to discern between things and man.

It is often flippantly averred that labor is a commodity, but modern civilization has clearly and sharply drawn the line between a bushel of coal, a side of pork and the soul of a human, breathing, living man.

The enactment of the legislation which we ask will tend to so define and safeguard the rights of the workers of to-day and those who will come after them, that they may hope to continue to enjoy the blessings of a free country as intended by the founders of our Government.

In the relief asked for in the proposed amendment to the Sherman antitrust law which we present to Congress, labor asks for no special privileges and no exemption from the treatment which any law-abiding citizen might hope to receive in a free country.

Indeed, the present Parliament of Great Britain at its session in December, 1906, enacted into law what is known as the trades dispute act. It is brief, and we therefore quote its provisions in full:

1. It shall be lawful for any person or persons acting either on their own behalf or on behalf of a trade union or other association of individuals, registered, or unregistered, in contemplation of
780 or during the continuance of any trade dispute, to attend for any of the following purposes at or near a house or place where a person resides or works, or carries on his business, or happens to be—

(1) For the purpose of peacefully obtaining or communicating information:

(2) For the purpose of peacefully persuading any person to work or abstain from working.

2. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be ground for an action, if such act when committed by one person would not be ground for an action.

3. An action shall not be brought against a trade union or other association aforesaid, for the recovery of damage sustained by any person or persons by reason of the action of a member or members of such trade union or other association aforesaid.

We submit that if such relief from the onerous conditions brought about by the Taff-Vale decision of the highest court of Great Britain can be enacted by a monarchical government, there ought to be no hesitancy in conceding it in our own Republic.

The unions of labor aim to improve the standard of life: to uproot ignorance and foster education; to instill character, manhood, and an independent spirit among our people; to bring about a recognition of the interdependence of man upon his fellow man. We aim to establish a normal workday; to take the children from the factory and workshop and give them the opportunity of the schools, the home, and the play-ground. In a word, our unions strive to lighten toil, educate their members, make their homes more cheerful, and in every way contribute an earnest effort to

ward making life the better worth living. To achieve these praiseworthy ends, we believe that all honorable and lawful means are justifiable and commendable and should receive the sympathetic support of every right-thinking American.

Labor asks only for justice. It asks that it be not victimized and penalized under laws never intended to apply to it.

We hope for a prompt recognition on the part of Congress of the wage-workers' very reasonable and moderate insistence in this important matter.

In addition, the other most important measures which labor urges are:

The bill to regulate and limit the issuance of injunctions—"Pearre bill."

Employers' liability bill.

The bill extending the application of the eight-hour law to all Government employees and those employed upon work for the Government, whether by contractors or subcontractors.

There are other measures pending which we regard as important, but we feel especially justified in urging the passage of these mentioned, because they have been before Congress for several sessions, and upon which extended hearings have been had before committees, every interest concerned having had ample opportunity to present arguments, and there is no good reason why action should longer be deferred by Congress.

We come to Congress hoping for a prompt and adequate remedy for the grievances of which we justly complain. The psychological moment has arrived for a total change of governmental policy toward the workers; to permit it to pass may be to invite disaster even to our national life.

In this frank statement of its grievances the attitude of labor should not be misinterpreted, nor should it be held as wanting in respect for our highest law making body.

781 That the workers, while smarting under a most keen sense of injustice and neglect, turn first to Congress for a remedy, shows how greatly they still trust in the power and willingness of this branch of the Government to restore, safeguard, and protect their rights.

Labor proposes to aid in this work by exercising its utmost political and industrial activity, its moral and social influence, in order that the interests of the masses may be represented in Congress by those who are pledged to do justice to labor and to all our people, not to promote the special interests of those who would injure the whole body politic by crippling and enslaving the toilers.

Labor is most hopeful that Congress will appreciate the gravity of the situation which we have endeavored to present. The workers trust that Congress will shake off the apathy which has heretofore characterized it on this subject and perform a beneficent social service for the whole people by enacting such legislation as will restore confidence among the workers that their needs as law-abiding citizens will be heeded.

Only by such action will a crisis be averted. There must be

something more substantial than fair promises. The present feeling of widespread apprehension among the workers of our country becomes more acute every day. The desire for decisive action becomes more intense.

While it is true that there is no legal appeal from a Supreme Court decision, yet we believe Congress can and should enact such further legislation as will more clearly define the rights and liberties of the workers.

Should labor's petition for the righting of the wrongs which have been imposed upon it and the remedying of injustice done to it pass unheeded by Congress and those who administer the affairs of our Government—then upon those who have failed to do their duty, and not upon the workers, will rest the responsibility.

The labor union is a natural, rational, and inevitable outgrowth of our modern industrial conditions. To outlaw the union in the exercise of its normal activities for the protection and advancement of labor and the advancement of society in general is to do a tremendous injury to all people.

The repression of right and natural activities is bound to finally break forth in violent form of protest, especially among the more ignorant of the people, who will feel great bitterness if denied the consideration they have a right to expect at the hands of Congress.

As the authorized representatives of the organized wage-earners of our country, we present to you in the most conservative and earnest manner that protest against the wrongs which they have to endure and some of the rights and relief to which they are justly entitled. There is not a wrong for which we seek redress, or a right to which we aspire, which does not or will not be equally shared by all the workers—by all the people.

While no Member of Congress or party can evade or avoid his or their own individual or party share of responsibility, we aver that the party in power must and will by labor and its sympathizers be held primarily responsible for the failure to give the prompt, full, and effective Congressional relief we know to be within its power.

We come to you not as political partisans, whether Republican, Democratic, or other, but as representatives of the wage-
782 workers of our country whose rights, interests, and welfare have been jeopardized and flagrantly, woefully disregarded and neglected. We come to you because you are responsible for legislation, or the failure of legislation. If these, or new questions, are unsettled, and any other political party becomes responsible for legislation, we shall press home upon its representatives and hold them responsible, equally as we now must hold you.

SAM'L GOMPERS,
W. R. FAIRLEY,
JOS. F. VALENTINE,
T. C. PARSONS,
P. J. McARDLE,
C. M. BARNETT,
W. D. MAHON,

Committee.

Samuel Gompers, president; James O'Connell, third vice-president; Max Morris, fourth vice-president; D. A. Hayes, fifth vice-president; Daniel J. Keefe, sixth vice-president; Wm. D. Huber, seventh vice-president; Joseph F. Valentine, eighth vice-president; Frank Morrison, secretary, and John B. Lennon, treasurer, executive council American Federation of Labor.

George L. Berry, Norman C. Sprague, International Printing Pressmen's Union.

John P. Frey, Iron Moulders' Union of North America.

G. M. Huddleston, International Slate and Tile Roofers' Union.

James Wilson, Pattern Makers' League of North America.

Richard Braunschweig, Amalgamated Wood Workers' International Union.

Charles R. Atherton, A. B. Grout, Metal Polishers, Buffers, Platers, and Brass Workers' Union.

Jere L. Sullivan, Hotel and Restaurant Employees' International Alliance.

W. R. Fairley, Thomas Haggerty, United Mine Workers' Union of North America.

A. McAndrews, E. Lewis Evans, Tobacco Workers' International Union.

James J. Freel, International Stereotypers and Electrotypers' Union.

W. F. Costello, H. T. Rogers, International Steam and Hot Water Fitters and Helpers' Union.

James O'Connell, Arthur E. Holder, A. McGilray, International Association of Machinists.

M. O'Sullivan, Thomas F. Ryan, Amalgamated Sheet Metal Workers' International Alliance.

J. E. Pritchard, International Pavers and Rammermen.

Thomas T. Maher, Amalgamated Sheet Metal Workers' International Alliance.

J. L. Feeney, International Brotherhood of Bookbinders.

C. M. Barnett, O. D. Pauley, American Society of Equity.

Timothy Healy, International Brotherhood of Stationary Firemen.

Rezin Orr, W. D. Mahon, Amalgamated Street and Electric Railway Employees.

783 John A. Moffit, Martin Lawlor, United Hatters of North America.

J. W. Kline, H. G. Poulesland, J. M. Cox, International Brotherhood of Blacksmiths and Helpers.

F. M. Ryan, Bridge and Structural Iron Workers' International Association.

Wm. J. Barry, Pilots' Association.

A. B. Lowe, International Brotherhood of Maintenance of Way Employees.

W. W. Beattie, Wesley Russell, Percy Thomas, Commercial Telegraphers' International Union of America.

J. E. Davenport, A. B. Wilson, International Brotherhood of Maintenance of Way Employees.

- M. J. Shea, International Stereotypers' and Electrotypers' Union.
 James L. Gernon, Pattern Makers' League of North America.
 J. M. McElroy, Brush Makers' International Union.
 T. A. Rickert, B. A. Larger, United Garment Workers of America.
 M. Zuckerman, H. Hinder, United Cloth Hat and Cap Makers of North America.
 H. B. Perham, A. T. McDaniel, W. J. Gregory, Order of Railroad Telegraphers.
 Jas. F. Speirs, Thos. C. Nolan, Wm. Grant, Brotherhood of Boiler Makers and Iron Shipbuilders.
 F. J. Kelly, International Photo-Engravers' Union.
 Wm. D. Huber, James Kirby, United Brotherhood of Carpenters and Joiners.
 Samuel Gompers, G. W. Perkins, Thos. F. Tracy, Cigarmakers' International Union.
 J. T. Carey, International Brotherhood of Paper Makers of North America.
 J. B. Espey, M. J. Kelly, International Brotherhood of Bookbinders.
 Jno. F. Breen, Hod Carriers' and Building Laborers' International Union.
 Max Morris, J. A. Anderson, Herman Robinson, D. F. Manning, Retail Clerks' International Protective Association.
 Jno. F. Tobin, Jno. P. Murphy, Boot and Shoe Workers' Union.
 Wm. Silver, Granite Cutters' International Association.
 W. A. James, F. M. Nurse, International Brotherhood of Stationary Firemen.
 J. C. Balhorn, Brotherhood of Painters, Decorators, and Paperhangers of America.
 Chas. C. Bradley, E. E. Desmond, American Wire Weavers' Protective Association.
 Jno. A. Dyche, International Ladies' Garment Workers' Union.
 Wm. J. Spencer, United Association of Plumbers, Gas Fitters, Steam Fitters and Steam Fitters' Helpers.
 Joseph N. Weber, American Federation of Musicians.
 T. J. Sullivan, Hotel and Restaurant Employees' International Alliance.
 J. H. Williams, Order of Railway Telegraphers.
 F. L. Mahan, Ed. L. Schrack, International Plate Printers.
 John J. Hanrahan, A. P. Kelly, H. Brosmer, Brotherhood of Locomotive Firemen and Engineers.
 John Manning, Shirt Waist and Laundry Workers' International Union.
 784 C. A. Laffin, Brotherhood of Locomotive Firemen and Engineers.
 Wm. H. Frazier, International Seamen's Union.
 T. J. Duffy, Frank H. Hutchens, Ed. Menge, International Brotherhood of Operative Potters.
 V. A. Olander, International Seamen's Union.
 Frank L. Ronemus, Brotherhood of Railway Car Men of America.
 George C. Griffin, United Brotherhood of Carpenters and Joiners of America.

Louis Kemper, A. J. Kugler, William Hellmuth, International Union of Brewery Workers of America.

T. C. Parsons, George G. Seibold, International Typographical Union.

D. A. Hayes, William Launer, James J. Dunn, F. H. Williams, Glass-Bottle Blowers' Association.

James McHugh, Journeyman Stone Cutters' Association.

Daniel J. Keefe, Thomas Gallagher, International Longshoremen's Association.

T. A. Rickert, United Garment Workers of America.

J. J. Flynn, P. J. Flannery, Interior Freight Handlers and Warehousemen's Union.

W. J. McSorley, R. V. Brandt, Wood, Wire and Metal Lathers' International Union.

P. J. McArdle, John Williams, Amalgamated Association of Iron and Steel Workers.

Jacob Fischer, Frank K. Noschang, Journeymen Barber's International Union.

John Golden, Albert Hibbert, United Textile Workers of America.

Daniel J. Tobin, International Brotherhood of Teamsters.

Matt Comerford, International Union of Steam Engineers.

F. A. Didsbury, Pocketknife-Blade Grinders and Finishers' National Union.

Edward W. Potter, Homer D. Call, H. L. Eichelberger, A. L. Webb, Amalgamated Meat Cutters and Butcher Workers of North America.

Frank Gehring, Lithographers International Protective and Beneficial Association.

J. F. Murphy, International Union of Elevator Constructors.

Frederick Benson, International Seamen's Union.

John H. Brinkman, Carriage and Wagon Workers' International Union.

P. F. Richardson, International Car Workers.

Joseph Reilly, United Brotherhood of Carpenters.

I. B. Kuhn, Cigarmakers' International Union.

Thomas McGilton, Brotherhood of Painters, Decorators and Paperhangers.

John Weber, Bakery and Confectionery Workers' International Union.

James J. McCracken, International Union of Steam Engineers.

James H. Hatch, Upholsterers' International Union.

J. F. McCarthy, Hotel and Restaurant Employees' International Alliance.

Mr. Parker also offered in evidence the address to workers referred to in the protest and reading as follows:

Executive Council: President, Samuel Gompers; Secretary, Frank Morrison; Treasurer, John B. Lennon, Bloomington, Ill.

First Vice-President, James Duncan, Hancock Bld'g, Quincy, Mass.

Second Vice-President, John Mitchell, 1111 State Life B't'd'g, Indianapolis, Ind.

Third Vice-President, James O'Connell, 402-407 McGill B't'd'g, Washington, D. C.

Fourth Vice-President, Max Morris, P. O. Box 1581, Denver, Colo.

Fifth Vice-President, D. A. Hayes, 930 Witherspoon B't'd'g, Philadelphia, Pa.

Sixth Vice-President, Daniel J. Keefe, 407-408 Elks' Temple B't'd'g, Detroit, Mich.

Seventh Vice-President, Wm. D. Huber, State Life Building, Indianapolis, Ind.

Eighth Vice-President, Jos. F. Valentine, Commercial Tribune B't'd'g, Cincinnati, Ohio.

Long Distance Telephone, Main 3871-2. Cable Address, 'Afel.'

423-425 G St. N. W.,

WASHINGTON, D. C., *March 18, 1908.*

Address to Workers.

To Organized Labor and Farmers' Associations, Greeting:

The "Protest Conference" of the representatives of the workers of our country assembled in Washington, D. C., on March 18, 1908, will probably go down in history as the greatest gathering ever held to solemnly voice the protest of the people against the denial of the rights of the workers by the judiciary. This conference will be memorable also for the declaration and action looking toward the upholding and defending of the rights of all our people.

There were gathered in this conference the responsible executive officers of 118 national and international trade unions; assembled with them in hearty agreement were representatives of the Farmers' American Society of Equity and also officers of railway brotherhoods. No more representative and responsible gathering of the men of labor, we believe, was ever brought together in the effort to voice the just protest and laudable aspirations of the workers of our country.

The deliberations of our conference, which occupied two full days, were preceded by a two days' session of the Executive Council of the American Federation of Labor. The proceedings were marked by the utmost harmony. There was indeed the intensity of feeling which so grave a situation must evoke, there was also an unbounded enthusiasm, a grim earnestness of purpose, and a firm determination that the work initiated by this conference should not cease until the wrongs from which the workers suffer shall be righted and their liberties which have been imperilled shall be restored and forever safeguarded.

Our consideration of the circumstances which made this conference imperative was characterized by the utmost freedom of expression. It was felt that in the consensus of opinion and feeling brought forth by the representatives of so many trades and callings

from all sections of the country there could not fail to be much that would be helpful in guiding our deliberations and of service to our fellow workers. It is our hope that every worker and every friend of the workers will realize and feel as we do the seriousness of the crisis which we now face and that all will be animated by the earnestness, the loyalty, and enthusiasm which was so marked among the representatives assembled.

While the Supreme Court or other institutions may be able to temporarily retard and seriously embarrass the growth and action of our movement we boldly assert that no power on earth can destroy, successfully outlaw, or disrupt the trade union movement.

Meetings had been held in various parts of the country and resolutions adopted and forwarded to American Federation of Labor headquarters urging prompt and vigorous action. The suggestions submitted were various in detail, but all characterized by the earnest desire that labor should take steps at once to exercise its fullest activities in every possible direction in order that relief may be obtained from the present intolerable situation.

In this conference we, your representatives, realized the serious responsibility resting upon us, not only to voice adequately the feeling of outraged indignation on the part of the workers at the deprivation of their rights and liberties involved in the law as interpreted by recent court decision, but the even more important task of initiating and aiding in carrying toward a successful fulfillment

the constructive and active work which shall deliver the workers from the present and impending danger and insure them the restoration of their rights and liberties and secure enjoyment in the future of the inalienable rights guaranteed by our constitution.

A large part of our deliberations were naturally devoted to a discussion of the Supreme Court's action in applying the Sherman anti-trust law to labor.

All agreed upon the necessity of immediate Congressional action if the serious consequences and threatened dangers to labor and the wealth producers of our country are to be averted.

The following amendment to the Sherman anti-trust law had already been drawn up and agreed upon by the Executive Council, acting with the legal advisors of the American Federation of Labor. This is designed to relieve labor from the harmful operation of the Sherman anti-trust law which was never intended to apply to it:

"That nothing in said act (Sherman anti-trust law), or in this act, is intended, nor shall any provision thereof hereafter be enforced so as to apply to organizations or associations not for profit and without capital stock, nor to the members of such organizations or associations."

"That nothing in said act (Sherman anti-trust law), or in this act, is intended, nor shall any provision thereof hereafter be enforced so as to apply to any arrangements, agreements, or combinations among persons engaged in agriculture or horticulture made with a view of enhancing the price of their own agricultural or horticultural products."

This amendment was carefully considered in conference and met with enthusiastic, hearty, and unanimous approval.

It was the unanimous feeling that some special steps should be taken to impress upon Congress the necessity of prompt action upon the Sherman anti-trust law amendment and upon other important labor legislation now pending, namely:

The bill to regulate and limit the issuance of injunctions—"Pearre bill."

Employers' liability bill.

The bill extending the application of the eight-hour law to all government employes, and those employed upon work for the government, whether by contractors or subcontractors.

Your representatives prepared the protest which you will find accompanying this, and delivered the same to Speaker Cannon of the House, and Vice-President Fairbanks, President of the Senate.

As to the effect of our solemn protest representing the desires and needs of our fellow-workers and their friends we can not at this time state, but we believe that Congress appreciates the gravity of the situation. In our protest we endeavored, while preserving a courteous and dignified form of address, to make it entirely clear to Congress that organized labor is in no mood to be trifled with. It means business. We truly believe that in this protest we stated very conservatively to Congress the intense feeling of anxiety and apprehension which agitates the workers of the country and their sympathizers.

Without doubt the presentation of labor's protest by our accredited representatives did much to convince the country at large that labor expects of Congress the relief which is within the power of the law-making department of government and expects it from this session of the present Congress.

The Supreme Court decision applying the Sherman law to labor makes the crisis an especially grave one, for under that decision every normal, peaceful, and helpful activity of the workers, whether exercised individually or in association, may be construed as a "conspiracy" or a combination in restraint of trade and commerce, and punished by fine and imprisonment or both, and damages may be inflicted to the extent of each individual's possessions.

Every legitimate pressure must now be brought to bear upon Congress in the effort to secure the passage of our amendment to the Sherman law.

Hold mass meetings in every city and town in the United States on the evening of the third Sunday or Monday in April, 19th or 20th, and at that meeting voice fully and unmistakably labor's protest against the Supreme Court decision which strips labor of the rights and liberties which we had supposed were guaranteed by the constitution. Resolutions should be adopted urging upon the present Congress the passage of the amendment to the Sherman law and warning Congress that it will be held responsible for failure to enact such legislation.

Labor should spare no activity to impress upon Congress its insistent demand for the passage of this amendment.

In addition to the holding of the mass meeting of April 19 or 20, and on such other dates as may be fixed in future and the forwarding of resolutions expressing labor's protest and determination every member of organized labor should write a personal letter to the Congressman of his district and to the two United States Senators of his State insisting that they use their efforts and cast their vote for the passage of our amendment to the Sherman law and other legislation mentioned in labor's protest, and warning them that labor and its friends will hold them responsible. That labor proposes to be represented in Congress by men who will do justice to the workers and all the people—that it proposes to exercise every political and industrial activity to this end—that upon the record of this Congress will be based the workers' decision as to a candidate's future desirability as a member of Congress.

Get every friend of labor to write a personal letter of this character. Let it be brief, but to the point, and keep a record of the resolutions and letters forwarded.

We hope most earnestly for the passage of the measures we have urged, but should Congress fail to do its duty we will, by following this method, be able to place the responsibility upon those who have failed to do justice to labor when it lay within their power.

We deem it essential for the successful accomplishment of the plan set forth in the foregoing that local unions, city, central, and state federations follow closely the line of action outlined by this conference and such further plans as may be promulgated by the Executive Council or by future conferences, so that our strength and influence may not be frittered away by different lines of action.

We have appealed to Congress for the necessary relief we deem essential to safeguard the interests and rights of the toilers.

We now call upon the workers of our common country to Stand faithfully by our friends.

Oppose and defeat our enemies, whether they be Candidates for President,

For Congress, or other offices, whether Executive, legislative, or judicial.

Each candidate should be questioned and pledged as to his attitude upon all subjects of importance to the toilers, whether in factory, farm, field, shop, or mine.

We again renew and hereby declare our complete and abiding faith in the trade union movement to successfully accomplish the amelioration of economic conditions befitting all of our people. The historical past of our movement, its splendid achievements in labor's behalf, and magnificent present standing warrants the assertion and justifies our prediction for its future success.

We, the representatives of the national and international trade unions and farmers' organizations, represented in this conference, call upon the Executive Council and upon all labor to use every possible legitimate effort to secure for the workers their inalienable liberties and their proper recognition as a vital portion of the fabric of our civilization. We pledge ourselves to use every lawful and honorable effort to carry out the policy agreed upon at this confer-

ence. We pledge our industrial, political, financial, and moral support to our own members and to our friends wherever found, not only for the present time, but for the continuous effort which may be necessary for success. We pledge ourselves to carry on this work until every industrial and political activity of the workers is guaranteed its permanent place and usefulness in the progress of our country.

Let labor not falter for one instant; the most grave and momentous crisis ever faced by the wage-workers of our country is now upon us.

788 Our industrial rights have been shorn from us and our liberties are threatened.

It rests with each of us to make the most earnest, impressive and law-abiding effort that lies within our power to restore these liberties and safeguard our rights for the future if we are to save the workers and mayhap even the nation itself from threatened disaster.

This is not a time for idle fear.

Let every man be up and doing. Action consistent, action persistent, action insistent is the watchword.

Representatives of National and International Unions and Farmers Organizations Who Endorsed and Signed the Above Protest.

Samuel Gompers, President.

James Duncan, First Vice-President.

John Mitchell, Second Vice-President.

James O'Connell, Third Vice-President.

Max Morris, Fourth Vice-President.

D. A. Hayes, Fifth Vice-President.

Daniel J. Keefe, Sixth Vice-President.

Wm. D. Huber, Seventh Vice-President.

Joseph F. Valentine, Eighth Vice-President.

Frank Morrison, Secretary.

John B. Lennon, Treasurer.

Executive Council, American Federation of Labor.

George L. Berry, Norman C. Sprague, International Printing Pressmen's Union.

Joseph F. Valentine, John P. Frey, Iron Molders' Union of North America.

G. M. Huddleston, International Slate and Tile Roofers' Union.

Richard Braunschweig, Amalgamated Wood Workers' International Union.

Charles R. Atherton, A. B. Grout, Metal Polishers, Buffers, Platers and Brass Workers' Union.

Jere L. Sullivan, J. F. McCarthy, T. J. Sullivan, Hotel and Restaurant Employés' International Alliance.

W. R. Fairley, Thomas Haggerty, United Mine Workers of America.

A. McAndrews, E. Lewis Evans, Tobacco Workers' International Union.

W. F. Costello, H. T. Rogers, International Steam and Hot Water Fitters' and Helpers' Union.

James O'Connell, Arthur E. Holder, A. McGilray, International Association of Machinists.

M. O'Sullivan, Thomas F. Ryan, Amalgamated Sheet Metal Workers' International Alliance.

J. E. Pritchard, International Pavers and Rammermen.

Thomas T. Maher, Amalgamated Sheet Metal Workers' International Alliance.

J. L. Feeney, J. B. Espey, M. J. Kelly, International Brotherhood of Bookbinders.

C. M. Bennett, O. D. Pauley, American Society of Equity.

Timothy Healy, N. A. James, F. M. Nourse, International Brotherhood of Stationary Firemen.

Rezin Orr, W. D. Mahon, Amalgamated Street and Electric Railway Employés.

John A. Moffit, Martin Lawlor, United Hatters of North America.

J. W. Kline, H. G. Poulesland, J. M. Cox, International Brotherhood of Blacksmiths and Helpers.

F. M. Ryan, Bridge and Structural Iron Workers' International Association.

Wm. J. Barry, Pilots Association.

W. W. Beattie, Wesley Russell, Percy Thomas, Commercial Telegraphers' International Union of America.

A. B. Lowe, J. E. Davenport, A. B. Wilson, International Brotherhood of Maintenance of Way Employés.

M. J. Shea, James J. Freel, International Stereotypers' and Electrotypers' Union.

James L. Gernon, James Wilson, Patternmakers' League of North America.

J. M. McElroy, Brushmakers' International Union.

T. A. Rickert, B. A. Larger, United Garment Workers of America.

M. Zuckerman, H. Hinder, United Cloth Hat and Cap Makers of North America.

H. B. Perham, A. T. McDaniel, W. J. Gregory, J. H. Williams, Order of Railroad Telegraphers.

Jas. F. Speirs, Thos. C. Nolan, Wm. Grant, Brotherhood of Boiler-makers and Iron Shipbuilders.

F. J. Kelly, International Photo-Engravers' Union.

Wm. D. Huber, James Kirby, Geo. G. Griffin, Jos. Reilly, United Brotherhood of Carpenters and Joiners.

G. W. Perkins, Samuel Gompers, Thos. F. Tracy, I. B. Kuhn, Cigarmakers' International Union.

J. T. Carey, International Brotherhood of Papermakers of North America.

Jno. F. Breen, Hodecarriers and Building Laborers' International Union.

Max Morris, J. A. Anderson, Herman Robinson, D. F. Manning, Retail Clerks' International Protective Association.

Jno. F. Tobin, Jno. P. Murphy, Boot and Shoe Workers' Union.

Wm. Silver, Granite Cutters' International Association.

J. C. Balhorn, Thos. McGilton, Brotherhood of Painters, Decorators and Paperhangers of America.

Chas. C. Bradley, E. E. Desmond, American Wire Workers' Protective Association.

Jno. A. Dyche, International Ladies' Garment Workers' Union.

Wm. J. Spencer, United Association Plumbers, Gas Fitters, Steam Fitters, and Steam Fitters' Helpers.

Joseph N. Weber, American Federation of Musicians.

T. L. Mahan, Ed. L. Schrack, International Plate Printers.

John Manning, Shirt Waist and Laundry Workers International Union.

Wm. H. Frazier, V. A. Olander, Frederick Benson, International Seamen's Union.

T. J. Duffy, Frank H. Hutchens, Ed. Menge, International Brotherhood of Operative Potters.

Frank L. Ronemus, Brotherhood of Railway Car Men of America.

Louis Kemper, A. J. Kugler, Wm. Hellmuth, International Union of Brewery Workers of America.

T. C. Parsons, George G. Seibold, International Typographical Union.

D. A. Hayes, William Launer, James J. Dunn, F. H. Williams, Glass Bottle Blowers' Association.

James F. McHugh, Journeymen Stone Cutters' Association.

Daniel J. Keefe, Thomas Gallagher, International Longshoremen's Association.

J. J. Flynn, P. J. Flannery, Interior Freight Handlers and Warehousemen's Union.

W. J. McSorley, R. V. Brandt, Wood, Wire, and Metal Lathers' International Union.

P. J. McArdle, John Williams, Amalgamated Association of Iron and Steel Workers.

Jacob Fischer, Frank K. Noschang, Journeymen Barbers' International Union.

John Golden, Albert Hibbert, United Textile Workers of America.

Daniel J. Tobin, International Brotherhood of Teamsters.

Matt Comerford, James J. McCracken, International Union of Steam Engineers.

F. A. Didsbury, Pocket Knife Blade Grinders' and Finishers' National Union.

Edward W. Potter, Homer D. Call, H. L. Eichelberger, A. L. Webb, Amalgamated Meat Cutters and Butcher Workers of North America.

Frank Gehring, Lithographers' International Protective and Beneficial Association.

J. F. Murphy, International Union of Elevator Constructors.

John H. Brinkman, Carriage and Wagon Workers' International Union.

P. F. Richardson, International Car Workers.

John Weber, Bakery and Confectionery Workers' International Union.

James H. Hatch, Upholsters' International Union.

of which one and a half million copies were printed, annexed to it being the letter recommended to be sent to senators, etc., the said letter and resolution attached to it being as follows:

—, April —, 1908.

Whereas we, the working people and their sympathizers of —, in meeting assembled to consider the situation in which the toilers of our country find themselves by reason of recent court decisions, and the failure of Congress to afford the necessary relief, and for the purpose of taking such action to secure adequate Congressional legislation for the protection, restoration, and defense of the natural and inherent rights of our people; and

Whereas the recent decisions of the United States Supreme Court, especially the decision in what has become commonly known as the Hatters' case, whereby the Sherman Anti-Trust Law was so construed as to deny and to unjustly affect the rights of the workers, and indeed all of our people, whether acting in their collective or individual capacity; and

Whereas the Supreme Court in this decision ignored the intent of Congress, which, while the Sherman Anti-Trust Act was under discussion, clearly showed by unanimous vote of the Senate that it was not intended to include the workers under the provisions of this Act and only omitted the direct statement because Congress and all public officials at that time were thoroughly convinced that the Sherman Anti-Trust Act would never be so constructed as to apply to Labor; and

Whereas the Supreme Court in its sweeping decision in the Hatters' case so construed the Sherman Anti-Trust Law as to make it apply to Labor not only in one, but in many of the most important and fundamental respects, penalizing the right of bestowing or withholding patronage and thereby practically establishing a vested right in such patronage, providing three-fold damages and fine and imprisonment as punishment; penalizing by fine and imprisonment the right of peaceful agreement with employers as to wages, 790 hours, and other conditions of employment, stigmatizing this most laudable effort toward industrial peace and progress as "conspiracy"; and

Whereas the law as construed under this decision is so foreign to its original purpose that Labor and all our people may well doubt if it cannot be applied in directions not yet fully realized so as to check and penalize the exercise of almost all natural and fundamental rights of voluntary association and uplifting effort which all supposed was guaranteed to us by the Constitution of our country; and

Whereas not only the Hatters' decision calls for immediate Congressional action, but other recent Supreme Court decisions as well, notably those declaring the Employers' Liability Law unconstitutional and that clause of the Erdman act relating to discharge on account of membership in a labor union. In addition, the action of the Courts by the abuse of injunctions, in denying the exercise

of free press and free speech and other natural and inherent rights have caused us to view with alarm, unrest, and dissatisfaction the existing state of affairs unless Congress shall promptly enact specific legislation which shall clearly so amend the Sherman Anti-Trust Act that its original intent shall be preserved and that it shall not apply, as it never was intended to apply to Labor and such other legislation as set forth in these resolutions for the further restoration, definition, and protection of the rights and activities of the wage-workers and all our people in the exercise of their individual and organized activities for the uplift and progress of the people and the preservation of the original just and equitable intent of our free institutions; therefore be it

Resolved, That, though protesting against the construction of law by the decisions of the Supreme Court applying laws to the workers never intended by Congress for that purpose, we yet accept and obey them, thereby demonstrating incontestably our patriotism, our law-abiding purpose and our faith in the institutions of our country, yet we must and do insist that Congress exercise its
791 power and perform its plain duty, granting the relief and remedy from the injustice of which we complain; and be it further

Resolved, That we express our firm conviction that it lies within the power of the present Congress to enact such laws that the rights and liberties of the toilers shall be restored and safeguarded, and we solemnly aver that under no circumstances will the workers surrender their right to and their faith in their voluntary organizations, which have done so much to protect them from tyranny and rapacity and which have raised the American standard of life of the workers, their wives, and their little ones, and instilled the highest ideals of American manhood, character, intelligence, and independence among the toilers of our country; the organizations of labor which have proven themselves not only the great means whereby the material, moral, social and political standard has been advanced, but have also shown themselves the greatest conservators of the public good and of the public peace; that we shall stand by our unions of labor and carry on our normal activities, whether as individuals or through our associated effort; and be it further
Resolved, That the working people and their friends in meeting assembled insist that the Congress of the United States cease its indifference or hostility and enact the legislation in these resolutions set forth, so that we may exercise our fullest, normal, natural and industrial rights, and to attain them we will exercise our industrial and political power; and be it further

Resolved, That we call upon the Congress now in session to enact before adjournment the amendment to the Sherman Anti-Trust Law, known as the Wilson Bill H. R. No. 20584; and be it further

Resolved, That we call upon the present session of the present Congress to enact the Pearre Bill H. R. 94, to so define the injunction power and restrain its abuse that neither directly nor indirectly

shall there be held to be any property or property right in the labor or labor power of any person; and be it further

Resolved, That we call upon Congress at this session to
792 enact an adequate, just and clearly defined general Employers' Liability Law; and be it further

Resolved, That we call upon this session of Congress to enact Labor's eight hour bill for the extension of the present eight hour law to all Government employes and to all employes engaged upon work done for the Government, whether by contractors or sub-contractors; and be it further

Resolved, That we hereby declare our determination to hold each and every Representative and Senator strictly accountable upon his record upon these measures during the present session of the present Congress; and be it further

Resolved, That we stand unqualifiedly committed to the measures and the Congressional relief set forth in these preambles and resolutions and the grievances set forth in the protest to Congress published in the Congressional Record, and the plan of campaign outlined in the Address to Workers, prepared and presented by the great labor conference, held at Washington, D. C., under the auspices of the American Federation of Labor. And we pledge ourselves individually and collectively to the exercise of our fullest political and industrial activities now, and in the future, to the end that we may aid in the election of such candidates for

President of the United States;

Representatives or Senators in Congress;

And such other Executive, Legislative or Judicial candidates for office as will safeguard and protect the common interests of the wage-workers, as well as the people of our common country; and be it finally

Resolved, That the toilers and their friends, fully aroused, will not be lulled into a fancied or false security by promises however plausible, protestations however masked by friendship, and that we call upon all our fellow workers, our friends, sympathizers, and enlightened public citizens generally, without regard to party affiliation, to

Stand by our friends and elect them;

Oppose the indifferent and hostile to our cause, and defeat them.

In this movement for our common protection we are
793 moved by a high sense of duty and a profoundly conscientious purpose to serve not only the workers of our time, but all the people of our great country for their industrial, political, social, and moral progress and uplift.

Date of Bill April 22, 1908.

Hon. ———, Capitol, Washington, D. C.

DEAR SIR: At a largely attended meeting of your constituents, held at ——— on April —, the enclosed resolutions were adopted and ordered sent to you so that you may be properly and reliably advised as to the sentiments that prevail among a large proportion

of people in this Congressional District on some very important economic and political questions, which if not settled quickly and to the complete satisfaction of the participants in this meeting, further steps will be taken to make these questions the paramount political issue of 1908, and for that matter in all future political campaigns until the evils herein complained of are adequately remedied. Our people hope for and count upon your support by voice and vote to enact at the present session of this Congress the legislation set forth in the enclosed resolutions.

Please advise the undersigned as to your position on the enclosed subject-matter at your earliest possible convenience. In addition to replying to the above, will you please present it with the enclosed resolutions to Congress as a petition, and oblige.

Yours, very truly,

Names.	Addresses.
_____	_____
_____	_____
_____	_____

Committee.

794 25600 or 25000 copies of the Urgent Appeal referred to were printed. That is 25000 is the bookkeeper's statement and ought to be correct.

Annexed to the Urgent Appeal is the Review and Protest editorial. Mr. Parker offers both in evidence.

300000 copies of Sulzer's speech in Congress were printed. 795 Mr. Parker next offered in evidence the article entitled "Essence of Labor's contention on the Injunction Abuse," being an editorial in the Federationist of August, 1908, 10000 copies of which witness says were issued.

796 "Essence of Labor's Contention on the Injunction Abuse.

Editorial by Samuel Gompers in American Federationist, August, 1908. Published by American Federation of Labor, 423 G Street N. W., Washington, D. C.

The crass ignorance of corporation lawyers and a hostile press is so rampant on the position and attitude of labor upon the abuse of the injunction process that we deem it a public service as plainly and concisely as possible to submit Labor's attitude and contention. It will be seen that Labor neither questions the integrity of nor desires to 'Shackle' the courts; that it stands for and insists upon absolute equality before the law—nothing more, nothing less. We believe we have the right to demand that the press, however hostile, shall not wilfully misrepresent or misinterpret Labor's position. We ask a careful consideration of Labor's contention upon this all-important question of our time, and we challenge a discussion of the points here submitted. Labor insists that:

"The writ of injunction was intended to be exercised for the protection of property rights only.

"He who would seek its aid must come into court with clean hands.

"There must be no other adequate remedy at law.

"It must never be used to curtail personal rights.

"It must not be used ever in an effort to punish crime.

"It must not be used as a means to set aside trial by jury.

797 "Injunctions as issued against workmen are never used or issued against any other citizen of our country.

"It is an attempt to deprive citizens of our country, when these citizens are workmen, of the right of trial by jury.

"It is an effort to fasten an offense on them when they are innocent of any unlawful or illegal act.

"It is an indirect assertion of a property right in men when these men are workmen engaged in a lawful effort to protect or advance their natural rights and interests.

"Injunctions as issued in trade disputes are to make outlaws of men when they are not even charged with doing things in violation of any law of state or union.

"We protest against the discrimination of the courts against the laboring men of our country which deprives them of their constitutional guarantee of equality before the law.

"The injunctions which the courts issue against Labor are supposed by them to be good enough law today, when there exists a dispute between workmen and their employers; but it is not good law—in fact, is not law at all—tomorrow or next day when no such labor dispute exists.

"The issuance of injunctions in labor disputes is not based upon law, but is a species of judicial legislation, judicial usurpation, in the interests of the money power against workmen innocent of any unlawful or criminal act.

"The doing of the lawful acts enjoined by the courts renders the workmen guilty of contempt of court, and punishable by fine or imprisonment or both.

"Labor protests against the issuance of injunctions in disputes between workmen and employers, when no such injunctions would be issued when no such dispute exists. Such injunctions have no warrant in law and are the result of judicial usurpation and judicial legislation rather than of Congressional legislation.

798 "In all things in which workmen are enjoined by the process of an injunction during labor disputes, if those acts are criminal or unlawful, there is now ample law and remedy covering them. From the logic of this there is no escape.

"No act is legally a crime unless there is a law designating it and specifying it to be a crime.

"No act is unlawful unless there be a law on the statute books designating and specifying it to be unlawful; hence, it follows that:

"No act is criminal or unlawful unless there is a law prohibiting its commission.

"It is agreed by all, friends and opponents alike, that the injunction process, beneficent in its inception and general practice, never should apply and legally can not be applied where there is another ample remedy at law.

"We assert that Labor asks no immunity for any of its men who may be guilty of any criminal or unlawful act.

"It insists upon the workers being regarded and treated as equals before the law with every other citizen; that is any act be committed by any one of our number, rendering him amenable to the law, he shall be -rosecuted by the ordinary forms of law and by the due process of law, and that an injunction does not lawfully and properly apply and ought not to be issued in such cases.

"The injunction process as applied to men engaged in a dispute with employers includes the allegation of criminal or unlawful acts, as a mere pretext, so that the lawful and innocent acts in themselves may also be incorporated and covered by the blanker injunction. And the performance of the lawful and innocent acts in themselves despite the injunction renders them at once guilty of contempt of the court's order which is summarily punished by fine or imprisonment or both.

"In itself the writ of injunction is of a highly important and beneficent character. Its aims and purposes are for the protection of property rights. It never was intended, and never should be invoked, for the purpose of depriving free men of their personal rights, the right of man's ownership of himself; the right of free locomotion, free assemblage, free association, free speech, free press; the freedom to do those things promotive of life, liberty and happiness, and which are not in contravention of the law of our land.

"We re-assert that we ask no immunity for ourselves or for any other man who may be guilty of any unlawful or criminal act; but we have a right to insist, and we do insist, that when a workman is charged with a crime or any unlawful conduct, he shall be accorded every right, be apprehended, charged, and tried by the same process of law as any other citizen of our country.

"With our position so often emphasized and so generally known, it is nothing less than wilful untruth and misrepresentation for any one to declare that it is our purpose to obtain any special privilege, particularly the undesirable and unenviable liberty of creating a privileged class of wrongdoers.

"When the real purpose and high aspirations of our movement and the legislation it seeks at the hands of the lawmaking power of our country shall be better understood by all our people, and the great uplifting work which we have already achieved shall find a better appreciation among those who now so unjustly attack and antagonize us, our opponents will be remembered for their ignoble work and course.

"The injunctions against which we protest are flagrantly and without warrant of law issued almost daily in some sections of our country and are violative of the fundamental rights of man. When better understood, they will shock the conscience of our people, the spirit and genius of our republic.

"We shall exercise our every right, and in the meantime concentrate our efforts to secure the relief and the redress to which we are so justly entitled.

"Not only in our own interest, but in the interest of all the people of our country, for the preservation of real liberty for the elimination of bitterness and class hatred, for the perpetuation of all that is best and truest, we can never rest until the last vestige of this injustice has been removed from our public life.

800 "We call upon the workers of our common country to

"Stand faithfully by our friends,

"Oppose and defeat our enemies, whether they be

"Candidates for President,

"For Congress, or other offices, whether

"Executive, legislative, or judicial."

801 He was Secretary of the 1907 Convention of the American Federation of Labor. Under the Constitution it was witness' duty as Secretary to send out copies of its printed proceedings; one copy to each delegate, one copy to the Secretary of each international organization; the Secretary of each central and state body; the Secretaries of local unions and it had been their practice and custom to send them to the organizers and the labor press.

They usually printed a sufficient number to have a surplus of say 1400. It was their custom to send proceedings say of the 1910 Convention to those elected to attend the convention of 1911 for reference and information. They usually took with them to that convention 500 or 600 hundred copies of the preceding convention, to supply all the demand that may be made by the Committees and delegates.

In discharging his duties as Secretary in the distribution of these copies it did not occur to him that he was perhaps violating the injunction of the court. The distribution works automatically.

During the period of the Convention, which is seldom in the City where the headquarters are located, the office force writes the envelopes and sometimes stamps and has them ready for distribution when received from the printer. When received by headquarters they go to the shipping department and are sent out without any questions asked or special order given.

Witness joined in signing the Urgent Appeal, of which 25000 copies were printed. When the Executive Committee ordered the appeal or urgent appeal should be issued, they referred it to the resident members to take counsel for the purpose of seeing that nothing should appear therein that would interfere with the test case that we had before the courts.

His understanding was they had the right to send out an appeal to secure funds to prosecute this case to the Supreme Court of the United States. They could not prosecute it if they did not secure funds. Attorneys' fees had to be paid and other expenses. Did

802 not sign this Urgent Appeal with the thought and intent and purpose that it should directly or indirectly in some way help to carry on an alleged boycott against the Stove Co. He did not have in mind any idea at all that it was to be used in that way. It was for the sole purpose of explaining to the members what we wanted the money for and the necessity for having a response to the appeal they were sending out.

Had no authority over the printing in the Federationist of that Urgent Appeal at all. Had the Urgent Appeal printed and it was sent out under his direction. Also sent out a reprint or an editorial from the February 1908 Federationist, entitled "Free Speech and Free Press."

Did not intend to aid, assist or abet in an alleged boycott against the Stove Company. It was sent out for the purpose of conveying to the members of the organized labor, particularly the officers, the history of the case and give them some idea of the necessity of making a contribution and also to avoid writing another statement. As that statement seemed to cover the case thoroughly it was thought best to reprint it and send it out with the circular for the Secretaries to read at the Union meetings and if they were satisfied with the explanation of the circular in regard to the necessity for the appropriation they could make it and if they wanted further information the editorial would furnish it.

The filler editorial referred to in the Committee's third charge commencing, "One of counsel for complainants etc." was printed by the witness on the reprint sent out with the Urgent Appeal. It did not occur to witness that it would have the effect of aiding, abetting or assisting the boycott against the Stove Co. and that was not in his mind. The only thing in his mind was that it was simply part of the history of the case and for information.

In all printed matter President Gompers was always anxious to fill all available space. That is that no space should be wasted because it cost no more to put in additional information.

803 As to the 4th charge of circulating many copies of the Federationist for January, February, March, April May June and September, 1908, the main distribution for January was not made by witness. He was absent from the City during that part of the period. His recollection is he left the office December 21st and the City on the 22nd. Attended a family reunion at Walkertown, Canada, and returned to the City January 1st and to the office late on the 2nd or early on the 3rd of January. Can give no better information than that.

On returning learned that the undertaking had been filed and the injunction was in effect.

After receiving information touching some action of President Gompers' instructed that a large number of January Federationists in the room or hall should be taken down and put in the vault so they could not be sent out. Discovered by an account afterwards they amounted to some 1363. Thinks that was the count furnished him. He did not count them. Furnished that fact at the last hearing to Mr. Davenport in September, 1908.

In the other case they asked witness to furnish information as to whether any had been disposed of and he got one of the clerks to look it up and furnished the information. Found out about those 1363 that were put in the vault. Discovered and furnished the information—his recollection is that 37 copies had been disposed of. There is very seldom any very great amount of call for the Federationist after the issue has been sent out, but they get calls from

lawyers, and papers and libraries and students, and from the record he secured by investigation the discovery that 37 copies had been sold.

Furnished the other side with the names and addresses of the purchasers. Did not know any of them had been sent out prior to this investigation. The record shows the day they received the payment of the money which may not indicate the day they were sent out but very near it. Prior to the investigation made at Mr. Davenport's request did not know that these had been sent out. Witness is authorized to take money and send out copies of the Federationist when they are paid for. Letters come in and they are receipted for as to the money contained in them and an order given and they go to the shipping room. It goes automatically and witness rarely if ever sees any letters in regard to the Federationist. That is handled by an employee who takes such correspondence and mail not requiring any special instructions or information witness has.

When the American Federation of Labor moved from the Typographical Temple to the Ouray Bldg. witness had in mind the fact that those Federationists were put away there and asked one of the boys what he did with them and the information he got was they had been disposed of with the other old paper and sold. The Federationist will show the data of the weight and money received. The amount received was receipted for. The February, March, April, May, June and September, 1908, issues of the Federationist were distributed by witness in accordance with his duties as Secretary. Did not in performing that duty for a moment entertain the thought he was aiding or assisting a boycott in violation of the Injunction.

805 (*Examination of Frank Morrison Continued, Feb. 17, Page 1626.*)

His recollection regarding the incident of January 10, 1908, about the submission of a motion to Mr. Justice Gould in behalf of the defendants in the Buck's Stove & Range Co. case, as to the proper instructions and interpretation of the Decree he had signed, is that witness was in Court when Judge Gould refused to modify the injunction, whereupon he asked Mr. Ralston to ask the Judge to state its limitations. His recollection is that Mr. Ralston stepped up to the bar and stated to the Court that the defendants thought the injunction deprived them of their rights and would like to have the Judge state its limitations.

Judge Gould said in substance that if he did it might deprive the plaintiffs of the relief they desired. That if the defendants were ignorant men and did not know their rights it might be a different proposition but that he had read a statement made by one of the defendants, or an article, which indicated to him that they understood their rights.

This is his recollection of the incident when he was in court.

The American Federation of Labor has never to his knowledge initiated a boycott and does not. It approves the action of affil-

iated organizations. The real purpose of the Federation is to take up those grievances and bring about an adjustment and prevent conflict if possible.

As an officer of the Federation it has been his duty to do what he could to bring about harmony in industrial fields, to adjust all differences if possible and bring about amity between employers and employees. He has performed that duty or sought to perform it. Has never understood that there was any power in the Federation to initiate a boycott.

Where grievances came up from an international Union to the American Federation of Labor and they made an attempt to bring about a settlement, if a settlement is not reached the name is placed in the Federationist under the "We don't Patronize" list. This is notice to the International Unions that there is a grievance between the members of the international organization and that Company.

Witness takes it that it would be notice that there were strained relations between the Company and the employees, and those members that knew it would not patronize the Company.

The Federationist published right prior to the name going on the statement that it had made an effort to bring about a settlement and failed, and that the company is unfair to organized labor. That is sometimes published. Does not know whether it is published every time, but knows it is a general practice. And after that publication it went on the "We don't patronize" list.

If in the course of examination by the officers of the American Federation of Labor it was found that the employer in the case of a boycott was not himself at fault, his name was not placed on the list.

Has no recollection that beyond the publication of the name in the "We Don't Patronize" list and the circular announcing the fact the American Federation of Labor or its officers, including particularly the respondents within the past 5 years have done nothing whatever consciously in furtherance of a boycott.

In this particular case they did nothing other than the notice that it was "unfair" and placing the name on the list, and sending out the circular under date of November 26, 1907.

Was not conscious of having taken any part in circulating the January 1908 Federationist after the date of the injunction, but found one copy was sent to Mr. Pettipiece of Vancouver, B. C. in which the letter was signed by witness. He is satisfied beyond doubt that he dictated it. He would like to read these letters so that the Court might see that there was no idea of furthering a boycott on the Company.

Witness offers in evidence the following letter, dated Dec. 27, 1907:

807 "Frank W. Morrison, Esq., Secretary, A. F. of L., 423-425
G Street N. W., Washington, D. C.

MY DEAR MORRISON: I have just returned from a five months' organization tour throughout western Canada for the I. T. U., and

will now be glad to take up the matter of organization work in this territory with you.

Kindly forward me the latest copy of 'International Secretaries' and such other information as may prove of value to me as your representative here, including the Federationist.

"Upon receipt of reply will write you more fully.

Yours,

R. P. PETTIPIECE

Under date of January 6th, this reply was forwarded to him:

"Mr. R. P. Pettipiece, Organizer, American Federation of Labor, 2138 West Minister Avenue, Vancouver, B. C.

"MY DEAR PETTIPIECE: Your favor of December 27th received here on the 30th with the information that you had just returned from a 5 month- organization tour through Western Canada, for the I. T. U. and that you are now in a position to take up the matter of organization work in Vancouver and request the latest copy of the International Secretaries and such other information that will prove of value. In accordance with your request I herewith enclose the latest list of affiliated organizations and under another cover am mailing a copy of the December and January Federationist. I am also enclosing samples of our literature that we have at headquarters. If there is any that you think you could use to advantage for distribution, kindly notify me and I will forward a quantity of each to you.

I notice by the papers that there seems to be a desire to land a great number of Japanese in your section of the country.

With the best and kindest wishes, I remain,

Yours fraternally,

FRANK MORRISON,

Secretary American Federation of Labor."

808 Has no recollection of sending out or having anything to do with sending out any copy of the January, 1908, Federationist, other than indicated by that letter.

Cross-examination.

By Mr. DAVENPORT:

Was born in Franktown Canada. Is 52 years old. His education was received in Walkerton, and part of a year in the high school. Is a printer by trade. Has been connected with it since 1873 and worked at it. Joined the Union in Chicago in 1886. Has been a member ever since of the International Typographical Union which is affiliated with the American Federation of Labor and one of its constituent organizations.

In 1896 was elected a delegate from the Chicago local to the Convention of the International Typographical Union at Colorado Springs, where he was elected delegate to the American Federation of Labor Convention held that year at Cincinnati, and at that Con-

vention was elected Secretary. Ever since has been re-elected delegate to the Conventions of the American Federation of Labor.

In 1896 was re-elected at the Convention but elected ever since continuously by referendum vote. Thinks this is his 16th year as a delegate, and is up for election this year for the next two years. Elections are bi-annual. Has to be a member of the Typographical Union to be a delegate of the American Federation of Labor. No one can be such delegate except from being in good standing in the local union. Their constitution requires that it be composed of selected delegate members of the Union. Has continued in good standing ever since. Took an oath when he joined the Typographical Union. Cannot from recollection state what the oath was. The oath has changed since he took his obligation. This change was made he thinks in 1896. The delegates at that Convention reaffirmed their obligation to the organization.

809 His recollection of the obligation when he joined is that he should abide by the majority and do everything he could to assist his fellow members. Took no obligation that interfered with his religious or political liberty at all. Recollects nothing in the obligation interfering with his political or religious liberty.

The obligation would be contained in the constitution of Typographical Union 16 of that year. The I. T. U. has a uniform obligation now which witness can furnish.

Since 1896 has made it his work to act as Secretary of the American Federation of Labor. That is the only occupation he has. When he became Secretary it had about 265 thousand members. Its revenues or receipts were in that year \$16,290.18 and disbursements \$15,452.95. That was the year before witness acted as Secretary, but that is the record and he has no doubt it is correct.

In 1907 and 1908 there were over 100 international Unions connected with the American Federation of Labor. Does not know exactly how many. The number in 1907 was 1,538,970 and in 1908 1,585,885. That was the average paid-up membership for the 12 months ending September 30th. Sometimes in the course of the year it would be a little more and sometimes a little less. The receipts for 1907 were 174,330.26 and disbursements \$159,960.84.

The receipts for 1908 were \$207,655.23; expenditures were \$196,937.36. The fiscal year closed September 30th each year, and accounts are all made up at that time, and submitted later to the auditing Committee of the Convention and also to the convention in the report witness makes.

Is required to keep an absolutely correct account of every penny that he receives as Secretary, the source of its receipt and every payment made and the person to whom it is made.

The statement pertaining to the payment of per capita tax and assessment is required to be published in the Federationist, the second month following the month when the receipts are due, and payments made. This is done each month and is as correct as possible.

Witness is required to send that statement out in the Federationist to the Secretaries of all affiliated Organizations.

810 The Constitution says "he shall publish a financial report monthly in the American Federationist and send one copy to each

affiliated body or such additional number of copies as may be ordered, and paid for by any organizations connected with the Federation."

Is required to send them to the central bodies (Secretaries), state bodies, national and international unions and secretaries of local unions affiliated direct with the American Federation of Labor.

In December, 1907, to comply with his obligation as Secretary he was required unless interfered with by court, to send to these different organizations the financial report for the month of November, 1907, which was to appear in the Federationist of January, 1908. There were about 37 or 38 of such organizations and approximately 500 or 600 City Central Labor Unions, and approximately 600 locals chartered directly by the American Federation of Labor with between 115 and 120 national or international unions.

There were to go out of the issue of January 1908 through his agency in accordance with the Constitution about 1400 copies to these various Unions.

Mr. Gompers was the editor of the Federationist and witness had certain duties to perform as Secretary in regard to them. Witness furnished the financial report to be published in the Federationist. That is made up during the first of the month. It contained all receipts and disbursements, day by day, even to a penny. They usually try to make a transcript from the cash book day to day and week to week, so at the end of the month or shortly after it they have a full transcript ready for the printer—within a week or ten days after. That witness furnished to Mr. Gompers or it was sent over to the printer, taking it for granted that the printer sets it up. It is gotten up some time before the 10th of the month so as to give the printer a chance to set it up and print it and revise it. It is generally revised before the 20th of the following month. After the printer sets it up and the proof reader reads it then it is brought

back to be re-read with the cash book to prevent any inaccuracies creeping in. It is of the utmost importance to the witness that it be absolutely correct if possible. It comes back to witness to be compared with his books by the 20th of the following month, in time so that the issue of the Federationist will not be delayed. Mr. Gompers has charge of everything in connection with the preparation of the Magazine. He is editor and in full control. Witness has nothing to do with it but supply the financial statement and receive the money for the copies and send out copies that are sold or deliver them. There is an advertising solicitor who secures contracts. These pass through the witness' hands so far as making a record of them is concerned and collecting the money but Mr. Gompers O. K.'d the contracts and looks after that part.

The insertion of advertisements is under Mr. Gompers' direction and has been for a great many years. He provides the editorials. Witness first sees the magazine some time after it is printed. Does not see its completed form. Sees the financial statement because he O. K.'s it. Puts the last O. K. on it in galley proof. Witness thinks he determines the number printed. He has delegated to himself the authority to do it on account of the knowledge he had of the number of subscribers and to whom they should go.

Witness O. K.'d the bills and drew the checks for printing. The Secretary now and 2 years ago retains and retained \$2000 to draw against for current expenses, and if it is not sufficient President Gompers instructs the Treasurer to send additional money.

At the end of the month witness submits to the Treasurer a statement of receipts and expenses and if the receipts are in excess *son's* the Treasurer a check for the excess and if the expenses are in excess of the receipts the Treasurer returns the difference.

Drew a check on the Riggs bank for payment of the January 1908 Federationist and sent it to the Law Reporter. Drew check out of funds in witness' hands.

Accounts that are regular charges against the Federationist it is understood he should pay just as soon as the bill is presented 812 and O. K.'d. There is a warrant drawn up authorizing Treasurer Lennon to pay through witness these people. That is signed by President Gompers and himself. Lennon accepts these warrants signed by President Gompers and himself as cash.

Understands President Gompers gets the editorials through with the idea of getting out the Federationist not later than the 24th. They are usually the very last bit of copy sent to the printer. He generally starts in to get them up between the 10th and 20th. Usually at the last moment.

Witness would say in giving the order to the printer for printing the Federationist that they wanted say 7500 printed and they would be printed until further notice. Witness would say to his subordinate, have so many printed and he sends it over to the Law Reporter Company. Thinks he may sometimes have written the Law Reporter so as to have it on record to avoid miscarriage of local orders. When printed they are sent to the Federationist Department by the Law Reporter and sent out. The Law Reporter Co. delivers them. Thinks the payment to Barnhard and Giles for hauling was for sending them to the Post office. Barnhard was bookkeeper at the time in the Federationist and advanced the money to pay for the hauling. That was one of the items appearing usually on the last day of the month in the charges. The same is true of Giles who got Barnhard's place. Imagines the Law Reporter sent copies directly to the Washington News Company. Is not sure whether they would go to the Reporters. Does not recall whether they come to the office and then were sent there or sent there direct. Should think it would be a waste of time to bring them to the Federationist. Does not recall giving any directions as to the number of the January 1908 Federationist to be issued. The order would be given in time so they would have it to print their first form.

Had complaints both ways as to being slow and for them to hurry up. "We would say they were slow and they would try to get the responsibility on us for not having the copy furnished in time or something."

813 There is exhibited to the witness from pages 50 and 51 under the heading "Official" in January, 1908 issue, special notice of settlement of difficulties with Joseph E. Finckh & Co. Notice placing the Herendeen Manufacturing Co. of Geneva, New York, on the unfair list. Placing the Ideal Manufacturing Co. of Detroit,

Mich. on the Fair list and the Official circular dated Nov. 29, 1907, reading as follows:

"HEADQUARTERS A. F. OF L.,
WASHINGTON, D. C., November 29, 1907.

"To the Officers and Members of Affiliated Unions:

"DEAR SIRS AND BRETHREN: You have been made fully aware of the fact that Mr. Van Cleave, of the Buck Stove & Range Company, who is also President of the National Association of Manufacturers, has applied for an injunction against the American Federation of Labor and its officers, both officially and individually, against the publication of the fact that the Buck's Stove & Range Co. of St. Louis Mo., is upon the "we don't patronize list" of the American Federation of Labor.

"The convention at Norfolk realizing the situation and the need of funds to defend the rights of labor in this suit, and determining that this suit shall be contested in its finishing decision by the United States Supreme Court, has levied a special assessment upon all affiliated organizations of one cent per member.

"You are also aware of the vicious concentrated effort which the National Association of Manufacturers and Citizens Alliance are making upon our fellow unionists at Los Angeles, other parts of the Pacific Coast and elsewhere, for the purpose of crushing out not only the organizations but the spirit of unionism among our men. For the purpose of counteracting that move, and to defend protect and advance the interests of the men of labor and to secure their rights and to make our movement impregnable against the assaults of our opponents, the Norfolk convention of the American Federation of Labor levied another special assessment upon each affiliated organization of one cent per member.

"The undersigned, the Executive Council of the American Federation of Labor, impelled by the highest sense of duty to all our fellow workers hereby respectfully notifies you of the levying of these two special assessments, and urges upon all the prompt payment of the same.

Then follows the balance of that circular, signed by Mr. Gompers and attested by witness, and then follows the "We don't patronize" list, with a column and a half or more of names, and witness states that he takes it for granted that in the first place President Gompers prepared it.

President Gompers revised the list of the month previous and prepared the "We don't Patronize" list in that issue. That was his duty as President. He has full charge of the Federationist.

814 President Gompers had charge of determining who was properly on and properly taken off the list. Witness does not know whether he assumed it or whether there was anything in the Constitution that required him to do it. Witness had nothing to do with it. Mr. Gompers has the "We don't Patronize list" in his department.

The list was revised prior to publication. Does not know just when. At that time witness was recording Secretary of the Ex-

Executive Council and took down the minutes. Was a member of the Council equal with others in voting power.

Thinks that during the years, 1907, 1908 and 1909 he attended every meeting of the Executive Council, acted as Secretary most of the time and kept the minutes, extracts from which were usually, if not always, published in the Federationist under the heading of "Official." They were published when President Gompers decided to publish them. They are published pretty regularly. Witness never revised them to see if they were accurate. Would accept them as being accurate as to the people named as present and when they state that "The following proceedings were had." Had duties to perform in connection with the Convention as Secretary and as such attended them. Mr. Gompers usually dictated the reports of the Executive Council and then they were read over by members and such changes or corrections or additions as the members believed should be made were made and then the record was passed upon and submitted to the Convention. The report is prepared and read to the Convention and all the names of the members of the Council attached and it is printed in the next day's proceedings. Thinks it is not required to be submitted in print. That has not been the practice. It is usually typewritten and printed in the proceedings, and the delegates have it the next day. Thinks they have printed it on one or two occasions. Knows that the Constitution requires the Secretary to convene the Convention.

When he became Secretary it was the custom for President Gompers to send out a call, attested by the Secretary, and when it met to call it to order and witness acted as Secretary. As such he has charge of the proceedings which are printed and supposed to be on the desks of the delegates half an hour before they convene the following day.

The record of 1907 shows 355 delegates. Think that is the number. Printed about 1800 of the proceedings each day. The delegates have them sent home to their families and friends, and some perhaps to their Unions. Some go to the labor and reform press. Does not know about the dailies. Mailed several hundred each day for the information of the labor press and the Secretaries of the Internationals and prominent labor men who might not be there.

Does not recollect the name of the printer at Norfolk who printed the daily proceedings. They were set up in two daily offices and in the small office that he had.

They had what they called an official stenographer, Mary Burke East, who had charge of the proceedings under the witness' general supervision and authority. Tried to go over the proceedings each night to see that no inaccuracies crept in. When the convention was over they had the pages set up, re-read corrected and electrotyped. The proceedings of the Norfolk Convention were sent on here to be printed by the National Tribune Co. he thinks. They had set up their reports and made plates while witness and his associates were away. Had great difficulty in Norfolk in getting printer to consider them at all. Had other work to do. This particular work was finished and his money fairly well assured. Delivery to the delegates was a couple of weeks late. Usually tried to get the proceedings out

by the first week in December. In this case they came pretty near missing getting them in during that year. Got the information from Mr. Manning when he reached Headquarters. Thinks the first installment from the National Tribune Co. in completed form came on the 31st of December. That is the Mr. Manning who was called as a witness. Thinks the bill shows they had 9000 copies printed.

816 Witness was supposed to have charge of the printing as Secretary, paid the bill or issued a check for it.

He got back to the office late on Jan. 2nd, 1908, or early on the 3rd. Heard when he arrived that the injunction had become operative.

Judges the proceedings when they came to Headquarters were placed in the basement. Judges Mr. D. F. Manning would have charge of them. Witness had charge under the Constitution of everything over there and Mr. Manning would act as an employee of the Federation, performing witness' duties under him, helping him in that particular instance.

The course witness expected to be pursued would be that copies would be sent to the Secretaries of the International Organizations to the delegates—they would be first. To secretaries of Central Bodies; to organizers, to the secretary of the local unions affiliated directly; to the labor press and from 6 to one dozen copies each to members of the Executive Council as they are called upon for copies from persons who know they are members. In addition we have orders from various organizations for from one copy up to several hundred which would be filled and sent out as quickly as possible.

These things were gotten out by the A. F. of L. for the purpose of distribution and giving them 400 copies for binding. The idea was to send them out as soon as they could after being published, and witness expected that would be done.

9000 was larger than had been printed on the first order before but witness in looking up the records found that the Minneapolis proceedings ran out and they had to reprint 1000, and 9000 were ordered to avoid the cost of reprinting because it was cheaper to print the extra thousand and in the 1907 proceedings was the history of the attack on Gompers by the Manufacturers Association and it occurred to witness there might be some call for this and he ordered the extra thousand.

"Q. At the same time there was another matter of general interest to your members, was there not, and that was the pendency
817 of the suit brought by the Buck's Stove & Range Company against the American Federation of Labor? A. Yes sir.

Q. And you expected rather a large call for that? A. No sir, I do not think that was in my mind at all.

The exhaustion of the Minneapolis proceedings compelled the reprint of 1000 copies, so delegates could have copies and as the extra thousand is not expensive he ordered it to be sure there would be enough.

In September, 1908, was requested to furnish information as to the number remaining and asked some one in the office to final

out. The information was furnished in the former proceedings. Got it from probably Mr. Manning who witness thinks would have had charge of things. 3000 copies were left. That is the information that he got. That might indicate there were 6000 sent out or that there were only 5600. It is a question whether they counted the 400 for binding. Copies were ordered bound in leather from Ziehl (Ziehl Exhibit No. 1, Jan. 4, 1912) for Theodore Roosevelt, Oscar Strauss, Charles P. Neill, the Committee on Labor, House of Representatives, the Senate Committee on Education and Labor; Judiciary Committee, United States Senate; the Parliamentary Committee, British Trade Union Congress, and the Library of Congress. Witness O'K'd that, his name on that Exhibit is his signature, and it was his expectation that those copies would be sent to those people.

The motion made before Mr. Justice Gould on January 10, 1908, when witness was present and as to which he has been inquired is as follows:

"In the Supreme Court of the District of Columbia

Equity. 27305.

BUCKS STOVE & RANGE CO.

VS.

THE AMERICAN FEDERATION OF LABOR et al.

"Now come the defendants by Ralston & Siddons and T. C. Spelling their solicitors, and move the Court to amend and correct the order passed herein on Dec. 18th, 1907, granting an injunction pendente lite in the following respects and for the following reasons:

818 "1. The said order is erroneous in that it is made to run until final decree in the said cause. Instead of until the further order of the Court.

"2. The said order is erroneous in that by its terms it may be construed to enjoin the defendants from uniting together to agree not to patronize plaintiff's products.

"3. The said order is erroneous in that it might be construed to prevent the defendants and their associate from saying to others that they had united and combined not to patronize the products of the plaintiff.

"4. The said order is erroneous in that it might be construed to enjoin the defendants from announcing to others that they had united and combined not to deal with others who would deal with the plaintiff or purchase its products.

"5. The said order is erroneous in that it abridges freedom of speech of all the defendants, which is protected by the first amendment of the Constitution of the United States.

"6. The said order is erroneous in that it abridges freedom of the press of all the defendants which is protected by the first amendment to the Constitution of the United States.

RALSTON & SIDDOSS.

T. C. SPELLING.

Defendants' Solicitors."

Judge Gould refused to modify the motion that had been made. Was not familiar with the motion made. Had not read it. He remembers that the motion was denied, and thereupon something occurred orally. Witness went to Mr. Ralston and said "I wish you would ask the Court to define the limitations of the injunction." To the best of witness' recollection Mr. Ralston advanced and said "Your Honor, the defendants would like to have you define the limitations of the injunction. The defendants seem to think that their rights—does not know whether he said personal rights or Constitutional rights—are denied to them or taken from them."

The Judge replied that if he defined the limitations of the injunction it might prevent the plaintiffs from securing the relief they desired. That if the defendants were ignorant men and did not know their rights it might be considered. But that he had read statements or articles which lead him to believe they understood their rights and would not be inconvenienced because of his refusal to state the limitations of the injunction. Remembers the incident because he wanted to know what the injunction meant.

He learned about 2 months subsequently that the injunction had been made permanent by Mr. Justice Clabaugh. Never went in any perplexities or doubts to any judge of the Court asking him as to whether any matter that the witness proposed to do or thought of doing was forbidden by the injunction other than asking his attorney to request Justice Gould to state the limitation of the injunction on that occasion. The reason was he gathered from what Judge Gould stated that this was an injunction restraining him from doing anything to aid and abet the boycott and having no intention of doing so and having done nothing to aid or abet the boycott he had no occasion to go to the Court.

The meeting of the Executive Council of the American Federation of Labor reported under the heading of "Official" in the March 1908 Federationist came on January 20th to 25th, 10 days after the refusal of Judge Gould to modify the injunction. The Executive Council decided that the Urgent Appeal should be issued and he thinks during that time the editorial in connection with it. Does not know that there was any misgiving among the members of the Executive Council as to this being in conflict with the injunction.

Thinks if the record is looked up it will be found he stated that the issuance of the Urgent Appeal was authorized, and that before it should be issued it should be submitted to counsel to find out if there was anything in it that would injure the test case which was before the court. That is his recollection of the testimony and what occurred.

Discussed the matter of the Urgent Appeal with their attorneys. Did not go to Judge Gould and ask him whether the document in this case was in violation of the injunction or whether he could with impunity disseminate it through the country because he was of the opinion that the injunction was ordered to prevent the aiding or abetting of the boycott of the Buck's Stoves & Ranges Company. Was firmly convinced they had the right to send out an appeal

820 to their people to get funds to carry this case to the Supreme Court, and there was nothing in the appeal in his opinion that would aid and abet a boycott, and certainly it was not in his mind nor in the minds of the members of the Executive Council or President Gompers—Mr. Mitchell was not there—to do anything to violate the injunction of Judge Gould. They wanted to and did obey the injunction, and proceeded to collect funds to carry the case to the Supreme Court.

The Executive Council directed that the appeal should be submitted to counsel. Did not submit it to the Justice of the Court then sitting who had issued the injunction, because it was not in his mind that the circular letter or reprint contained anything that could be considered as sent out for the purpose of a boycott on the Company.

Consulted counsel by direction of the Executive Council, of which he was one. It was referred to the resident members, Gompers, O'Connell and witness. He submitted it to counsel and thinks they both read the urgent appeal. Has no special recollection with regard to the reprint. It did not at any time occur to him when he was distributing the proceedings of the Norfolk Convention that there would be doubt as to his right to do so in view of the terms of the injunction.

Read the opinion of Justice Gould when it was delivered and published, and read the terms of the order. After Justice Wright rendered his decision collaborated with Gompers and Mitchell in the publishing of the editorial published in the February 1909 Federationist under the title "Decision Reviewed."

Witness' attention is called to page 143 of the February 1909 Federationist reciting that the charge against him is that he caused to be distributed the proceedings of the Convention and the Federationist and signed the Urgent Appeal and that the Federation of Labor et al. had had an unwarranted injunction served on them enjoining them from doing things they had a perfect right to do, and asked if after hearing it read he still says that it never occurred to him it was a violation of the injunction, to circulate the printed proceeding of the Norfolk Convention.

821 Witness answers yes, and he desires to explain his reason: that it was his understanding that it was an injunction restraining him from aiding or abetting and continuing a boycott on the Company. That no act of his had for its purpose boycotting the Company. That he was fully convinced they had the right of free press and free speech, and the District Court of Appeals in its decision handed down held that so much of Justice Gould's injunction as offended against or transgressed free press or free speech, was void.

He has the same opinion so clearly expressed by the Court to Mr. Mitchell, when he said as he understood he said, that there was nothing in Judge Gould's injunctions that was intended to interfere with free press or free speech, that it was intended to restrain the members from aiding abetting or continuing the boycott. That was in his mind from the first.

Witness' attention is directed to his report of the proceedings of the Executive Council at Washington, Sept. 9 to 12, 1908, and of President Gompers on page 1001, November 1908, Federationist, as follows:

"I beg to submit herewith report of the general status of the labor movement.

Then, under the title of Buck's Stove & Range Co. injunction suit which has been read in evidence before this time he says:

"As you have been previously advised, Vice President Mitchell, Secretary Morrison and myself have been cited to appear before the Supreme Court of the District of Columbia to show cause why we should not be punished for contempt for violation of the Court's injunction. The petition upon which the Buck's Stove & Range Co. ask for our punishment was published in the September issue of the Federationist, and I suggest it be read in connection herewith, as it will show to what extent the E. C. and officers and members of the affiliated organizations and all others are enjoined and what they are enjoined from doing.

"Your attention is respectfully called to a feature of the case of this injunction. If all the provisions of the injunctions are to be fully carried out we shall not only be prohibited from giving or selling a copy of the proceedings of the Norfolk Convention of the A. F. of L. either a bound or unbound copy, or any copy of the American Federationist for the greater part of 1907 and a part of 1908, either bound or unbound, but we as an E. C. will not be permitted to make a report on this subject to the Denver Convention, unless we violate the terms of the injunction. We are prohibited from referring to the case at all. Either in our report to the Convention or to others, and should a delegate to the Convention ask the E. C. what disposition had been made or what the status of the case is we shall be compelled to remain silent.

822 For one I am unwilling to be placed in such a position.

I have neither the inclination or the intention of violating the process of the Court, but I cannot see how it is possible for us to hold up our heads as honest men and still refuse to give an accounting to our fellow workmen and to the public as to the status and outcome of this case.

"I have already referred to the fact that Messrs. Mitchell, Morrison and myself were cited to appear and show cause why we should not be punished for contempt of Court, and the hearing occurred Sept. 9th and after argument Judge Gould decided to give 60 days for taking of testimony of both sides. The case in its general aspects and status as already reported to you is that an appeal has been taken to the Court of Appeals of the District of Columbia against the injunction made permanent by the Supreme Court of the District of Columbia."

Witness says that appears to be President Gompers' report to the Executive Council, of which he was a member and Secretary and recorded. Took a large number of these proceedings, should say 600 and distributed them among the delegates at the Convention

at Denver who called for them and put them on the desks. Does not know whether he brought any of them back.

Knew at that time he was charged with contempt. In the dissemination of those proceedings. The answer had been made he thinks. Thinks all the court records were published in the Federationist. Thinks the petition containing these charges was published in the September number. Is not sure.

"Q. (Reading) "Answer of Frank Morrison.

The witness consents that the following paragraph of his answer in the original contempt proceeding may be read into the record.

"Sixteen. Answering the 16th paragraph of the petition so far as the same relates to this respondent, he says that he admits that the January number of the American Federationist published the We Don't Patronize List of the American Federation of Labor containing the name of the petitioner, and that bound copies of the Federationist as well as the proceedings of the Norfolk Convention were advertised for sale, as stated in said number. He also admits
S23 that the *the* said proceedings of the Norfolk Convention contained, as stated the name of petitioner as being on the unfair list of the American Federation of Labor. He denies that he thereafter continued to circulate and distribute the said issue, or that he has continuously to the present time circulated and distributed to the public generally copies of the said number of the American Federationist. He admits that copies of the proceedings of the Norfolk Convention and bound copies of the American Federationist, 1907, containing, as stated, the name of the petitioner on the We Don't Patronize List of the American Federation of Labor may have been sold from the office of the Federation. Nevertheless he alleges that in the event of any such sale having taken place, the purpose thereof was not to injure or affect the petitioner in any way or to violate the terms of the order of this Court but they were made in the usual course of business to associations, libraries or like institutions, attorneys, students of industrial history or social science, desiring complete files, and that any such sales, if any such took place, as to which he has no knowledge, were not in wilful or any disregard and contempt of the order and decree of this Court."

Of course the proceedings of the Denver Convention were after the date of the filing of his answer, which is dated Sept. 4, 1908. The copies of the proceedings which were two or three weeks late were sent out in accordance with the usual custom that has been in vogue for years to the various organizations named, being organizers of the Federation, to the Secretaries of the various subordinate unions and delegates and some 600 copies were taken
S24 for distribution among the delegates to a subsequent convention and to those officers of the internationals and others that ordered them and outside of that just those copies that are sent for by libraries and students and men interested in the labor movement.

Mr. Davenport reads to witness from the record of the Executive Council held March 18 to 23, 1907, contained in the Federationist

pages 348 and from the bottom of page 356 to 357, recital of applications of organizations having grievances against particular firms and asking endorsement and calls his particular attention to the 2nd column containing special notice reciting certain firms as having been declared unfair, including the Buck's Stove & Range Co., was asked if such action was taken at that time, and responds that the fact that this notice has President Gompers' name would indicate that it had.

The Buck's Stove & Range Co. name appears on the "We Don't Patronize" list in the June number. If the list was published in each month it would appear every succeeding month down to and including January, 1908. It was omitted from the February list.

Understood from President Gompers that the matter of rescinding the declaration of unfairness was submitted to the Executive Council and they so acted. There ought to be a record. Witness has not got the record here. Thinks he could get it. It was not in the meetings. As he understands it the proposition was submitted by President Gompers to the Council and sent around.

No meeting of the Executive Council rescinding the declaration of unfairness was held during witness' absence as he understands it.

Has no recollection of any action being taken except the striking off of the names from the "We Don't Patronize list" in compliance with the injunction of Judge Gould until there was an adjustment in 1910 between the Company and the affiliated organizations of the strike which brought about amity between the Company and the employees. There was no statement showing a satisfactory settlement of the differences between the organizations and the Buck's Stove & Range Co. in the Federationist September 1909 down to and including September, 1910, except some statements about the settlement with the Buck's Stove & Range Co. but not previous to that. Does not know of any such statement having been made in any of the labor or reform press of any rescission.

Has no objection to Mr. Davenport reading the 13th paragraph of the Complaint in the petition for Contempt and his answer thereto reading as follows:

"XIII. And in the same October, 1907, number of the American Federationist, at pages 791 and 792, thereof, in the column headed 'Editorial Notes' said Samuel Gompers referring to this cause, used the following language:

"So labor must not use its patronage as it will—that is, if Van Cleave of Bucks Stove & Range Co. fame has his way. But what vested right has that company in the patronage of labor or of labor's friends? It is their own to withhold or bestow as their interest or fancy may direct.

"They have a lawful right to do as they wish, all the Van Cleave's, all the injunctions, all the fool or vicious opponents to the contrary notwithstanding.

"Wonder whether Van Cleave will try for an injunction compelling union men and their friends to buy the Bucks Stove & Range Co.'s unfair product?

"Until a law is passed making it compulsory upon labor men

to buy Van Cleave's stoves, we need not buy them, we won't buy them, and we will persuade other fairminded sympathetic friends to cooperate with us and leave the blamed things alone.

"Go to—with your injunctions."

"And under the same heading he published the following additional statement:

"The Bucks Stove & Range Co. of St. Louis (of which Mr. Van Cleave is President) will continue to be regarded and treated as unfair until it comes to an honorable agreement with organized labor. And this too whether or not it appears on the We Don't Patronize List.' "

and from answer:

"Answering the 7th, 8th, 9th 10th 11th 12th and 13th paragraphs of the petition, this respondent admits as to the publications on personal knowledge and as to the speeches therein referred to on information and belief the substantial correctness of the statements therein contained, but for greater accuracy refers to the publications themselves; but he does not admit the statements of intent associated by the petitioner therewith, and is advised by counsel that it is unnecessary for him to make further or more specific answer to said paragraphs, this respondent not being connected or associated therewith."

Witness says that answer was made under oath if that is the correct copy of the answer. The Executive Council convened here in August 1907. Was served with a petition on August 9, 1907. Does not know whether all his colleagues were here, the record would show that. Does not know the special reason for their meeting here. Mr. Gompers has authority to call the Executive Council meeting any time he wants to.

They met at Washington, disposed of part of the business and adjourned to meet at the Fairfax Hotel at Norfolk to examine the exhibits at the Jamestown Exposition and to give the officers time to arrange for a convention hall, hotel accommodations and for printing for the convention to be held in November. Should think they all went down at the same time though that is not within his recollection now.

Thinks they were together in Washington a couple or three days and in Norfolk the balance of the week. Was served in the office with a copy of the complaint Aug. 19 by the record he has. Read the complaint. Was served on August 19th with a summons and not a copy of the complaint. Does not remember whether he got hold of a copy of the complaint or read it. What he had in mind was a summons. Cannot recall whether he read the complaint. His understanding was that it was an application to secure a temporary restraining order on the officers of the Federation and others from boycotting the Company.

Understands the answer was made to which he swore and signed. Between the service of the summons and the convening of the Convention on Nov. 1907, the Sept., Oct. and Nov. numbers of the Federationist appeared. When the Convention convened Mr. Gompers made a report and the witness as Secretary and Mr. Len-

non as Treas. "And the Executive Council made their reports which were afterwards printed and published in the proceedings of the Convention of 1907. Had no information that he testified that the following occurred in the report of Treasurer Lennon:

828 Q. (reading) "Mr. Parry, Mr. Post and Mr. Van Cleave are as usual pointing the road on which we should travel and the Trade Unionists are going in the opposite direction, having discovered that as light houses to guide the mariner on the industrial seas, they are failures. We are taking counsel of ourselves and our proven friends, and our enemies are looking on our development and progress with dismay and consternation. Injunctions do not scare us, for we are lawabiding citizens. The Bucks stove is not calculated to warm the cockles of the heart of any trade unionist—no, nor of any man or woman that stands for a square deal. I do not mean a square deal in name only, but I mean a square deal as the carrying out of the Golden Rule in our industrial life. We propose to keep warm without the use of any Buck stoves, injunctions to the contrary notwithstanding."

829 Had not occurred to him until he heard Mr. Davenport read it from the proceedings. The report of Mr. Gompers dealt quite fully with the subject.

Mr. Davenport offers in evidence from Mr. Gompers' report on page 35 of the proceedings of the Norfolk Convention ending on page 37 as follows:

830 "Van Cleave's Suit Against the A. F. of L.

"The Buck's Stove and Range Co. of St. Louis, of which Mr. J. W. Van Cleave is president (and he is also president of the National Association of Manufacturers) brought suit against the American Federation of Labor, the members of its Executive Council, both officially and individually, and several other officers and members of unions attached to international unions affiliated to the American Federation of Labor. The papers in the suit of the Buck's Stove and Range Company have been served upon us, and also a notice to show cause why a permanent injunction should not be issued against our publishing the company upon the We Don't Patronize list of the American Federationist. Inasmuch as this report is written in advance of the day set for the hearing of this application for an injunction, November 8, the developments thereof will be incorporated in the report of the Executive Council. A résumé of some of the incidents leading to the present situation may be necessary for the proper understanding of our position.

"The International Brotherhood of Foundry Employeés and other organizations had an agreement with the Buck's Stove and Range Company, and some still have agreements, *with*er directly or through an employer's association of which the Buck Stove and Range Company is a part. In the case where the organization of labor was not so well fortified, the company antagonized it, assuming a hostile attitude with a view of crushing the Union and imposing unfair

conditions upon its members in the line of work which they performed.

"A contest ensued, and the organization in question declared the Buck's Stove and Range Company of St. Louis unfair. It appealed to all organized labor and its friends to transfer their patronage to other and fairer employers. A similar appeal was made

831 to the American Federation of Labor and, pursuing the usual course followed in cases of appeal of this character, I caused an investigation to be made and made the further investigation myself, and had a representative of our Federation endeavor to bring about an honorable adjustment of the controversy between the organization primarily in interest and the company.

"The fact developed that Mr. Van Cleave, the President of the Company, was known to be so hostile to all organized labor that he violated the agreement he had to his company (through the Employers' Association, of which he was a member) with an international union, and that it was only through the disciplinary power and measures of that Employers' Association that he for his company was required to conform to the agreement. In the case in point the International Brotherhood of Foundry Employees had no such advantageous position, and Mr. Van Cleave, for his company, exercised his antagonism to the fullest.

"The investigation demonstrated clearly Mr. Van Cleave's hostile purpose towards the organization in question, and every effort at an amicable adjustment was fruitless. It was then that my colleagues and myself, the executive council, approved the position and action of the organization affected, and this fact was published in the American Federationist. The suit is brought to prevent this publication. It will determine our legal right, not only in this instance, but practically in all similar cases.

"The Executive council and the other defendants authorize me to retain competent counsel to defend our rights before the court. In arguing a preliminary motion before Judge Calabaugh, of the Supreme Court of the District of Columbia, the counsel for the Buck's Stove and Range Company substantially declared the following to be about the theory of its case:

"That the American Federation of Labor and all its affiliated organizations, international, the locals of internationals, state federations, city central bodies, locals affiliated to them, all local
832 branches directly affiliated by charter, are engaged in one common purpose; that they find it inexpedient to become incorporated and are therefore bound to all the legal responsibilities appertaining to partners and partnerships; that under this partnership the American Federation of Labor is legally responsible for the acts of a constituent body located at a distance and even though the officers of our Federation may know nothing whatever of the doings of the distant partners, this partnership liability extends not merely to contract relations but to the tortious and wrongful acts of the individual members of all the organizations or branches enumerated.

"Our counsel advise me that the idea of the counsel of the Buck's

Stove and Range Company is apparently that the American Federation of Labor and all of its constituent parts are running amuck in boycotting, and in this course any person, no matter how distantly associated with a minor union, is responsible for all of its acts. Our counsel add: To our minds this theory outlined by the complaint is absolutely untenable, and the fact that it is advanced indicates a want of solid ground upon which to rest the bill of complaint.

"The taking of testimony will, I am informed, shortly begin.

"Quite apart from the consideration of the absurdity of the position, it would make the American Federation of Labor, as such, its executive officers, officially and individually, legally responsible for any action taken by any local union even though remotely related to the American Federation of Labor. Let me present some of the fundamental principles involved in the assertion of labor's rights:

"The ownership of a free man is vested in himself alone. The only reason for the ownership of bondmen or slaves is the ownership of their labor power by their masters. Therefore, it follows that if free men's ownership of themselves involves their labor power, none but themselves are owners of their labor power. Hence it is essential that the product of a free man is his own. If he, by choice or by reason of his environment, sells his labor power to another, and is paid a wage in return therefor, this wage is his own. This proposition is so essentially true that it is the underlying idea upon which is based the entire idea of structure of private property. To question or to attempt to destroy the principle enunciated involves the entire structure of civilized society.

"The free man's ownership of himself and his labor power implies that he may sell it to another or withhold it; that he may, with others similarly situated, sell their labor power or withhold it; that no man has even an implied property right in the labor of another; that free men may sell their labor power under stress of their needs, or they may withhold it to obtain more advantageous returns.

"Labor power is not a product; it is a human power to produce; in its very nature it cannot be regarded as a trust or a corporation formed in restraint of trade. Any legislation or court construction dealing with the subject of organizations, corporations or trusts which curtail or corner the products of labor, can have no true application to the association of free men in the disposition or withholding of their labor power.

"The attempt to deny to free men, by injunction or other process, the right of association, the right to withhold their labor power or to induce others to withhold their labor power, whether these men be engaged in an industrial dispute with their employers, or whether they be other workmen who have taken the places of those engaged in the original dispute is an invasion of man's ownership of himself and of his labor power, and is a claim of some form of

property right in the workmen who have taken the places of strikers or men locked out.

"If the ownership of free men is vested in them, and them alone, they have not only the right to withhold their labor power but to induce others to make common cause with them, and to withhold theirs that the greatest advantage may accrue to all. It further follows that if free men may avail themselves of the lawful right of withholding their labor power, they have the right to do all lawful things in pursuit of that lawful purpose; and neither court injunctions nor other processes have any proper application to deny to

free men these lawful, constitutional, natural and inherent
834 rights.

"In the disposition of the wages returned from the sale of labor power, man is also his own free agent. All things he may lawfully buy, he may also lawfully obtain from buying. He may purchase from whomsoever he will, or he may give his patronage to another. What he may do with his wages in the form of bestowing or withholding his patronage, he may lawfully agree with others to do.

"No corporation or company has a vested interest in the patronage of a free man. If this be true, and its truth cannot be controverted upon any basis in law, free men may bestow their patronage upon anyone or withhold it, or bestow it upon another. And this, too, whether in the first instance, the business concern is hostile or friendly. It is true for any good reason, and in the last analysis, for no reason at all.

"It is not a question as to whether we like or dislike lockouts or strikes, boycotts or blacklists. The Courts have declared that lockouts and the blacklists and all that pertains thereto are not unlawful. It is difficult to understand, then, unless there is some conception in the courts, of an employer's property right in some form in the laborer or the laborer's patronage, how they stretch their authority, pervert the purpose of the law, and undertake by the injunctive process to outlaw either the strike or the boycott.

"To claim that what one man may lawfully do when done by two or more men becomes unlawful or criminal, is equal to asserting that nought and nought makes two.

"In the case in point the suit brought against us by the Buck's Stove and Range Company, another and exceedingly important feature is involved. It is a blow aimed at the freedom of speech, the freedom of assemblage, the freedom of thought, and particularly the freedom of the press.

"The Constitution of the United States and the Constitution of every State in the Union are in accord with it, in clearly justifying
labor's contention.

835 "The first amendment to the Constitution of the United

States provides that, 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.'

"The attempt to enjoin or prevent the publication of the We Don't Patronize list of the American Federation of Labor, whether by injunctive process or other judicial or legislative means, would be in direct violation of the constitutional guarantee and would indeed abridge free speech and a free press. In all the land there is neither law nor power to enforce such a decree."

836 As one of the Executive Committee united in the reports submitted to the Convention of 1907.

Mr. Davenport offers in evidence the following from the top of page 90 of the report and reading as follows:

837 "Van Cleve's Buck Stove suit against A. F. of L.

"You have already been made acquainted with the fact that the Buck's Stove and Range Company has brought suit against the Executive Council of the American Federation of Labor and officers of other affiliated organizations both in their official and individual capacity. The president of the Company is Mr. Van Cleve, who is also president of the National Association of Manufacturers and vice-president of the so-called Citizens' Alliance and other organizations whose main mission seems to be the effort to crush out the only defensive organization of the working people, the trade unions, local, national and international and federated into the A. F. of L. In connection with the suit Mr. Van Cleve for his company has secured an order from Justice Clabaugh of the Court of the District of Columbia for us to show cause why an injunction should not be issued restraining us from publishing the Buck's Stove and Range Company upon the We Don't Patronize list of the American Federation of Labor and to enjoin all labor organizations or labor men from doing anything or saying anything, whether orally or in print, in furtherance of the purpose to secure better recognition by the company referred to for a satisfactory adjustment of existing disputes between the union particularly in interest and the company.

"Owing to the fact that the officers party to the suit, have been so much engrossed with their ordinary official duty, as well as their work in preparation for this convention, and the convention itself, our counsel on last Friday asked for a continuance, that is, a postponement on the hearing upon the proceedings to show cause why an injunction should not be issued until the close of the convention.

The case was formerly before Chief Justice Clabaugh of
838 the Supreme Court of the District of Columbia. It is now before Justice Gould of that court. The latter granted a continuance, but only until Thursday morning, November 14th.

"The National Association of Manufacturers, at its last convention, created a war fund of a million and a half dollars to carry on a campaign of destruction of the organizations of labor. It has hired Pinkerton and other agencies and formed auxiliary associations, the purposes of which are not only to harass the men of labor in litigation, but also to create suspicion of wrongdoing. It

is the apparent purpose to assassinate the character of the men who have the confidence and respect of the great rank and file of labor, not only of labor, but of the great masses of our people. Until recently the Pinkertons were exclusively engaged in prying upon the men in the local organizations. To create discord, to provoke premature contest, in order to render themselves of some apparent value to their employers, the Van Cleaves, Posts and others, they had no hesitancy in making false reports as to the doings of the members of local organized labor.

"The attacks upon the local men and upon the local organization having proven fruitless, they now turn their attention to the men at the head of the labor organizations of the country. In the effort to crush out organized labor, the Van Cleaves have found the spirit of unionism and solidarity is too deep-seated in the hearts and minds of the trade unionists of America for them to succeed. They know that the men entrusted with the leadership of the labor movement throughout our country have aided materially in guiding aright the organized wage earners. They now think that if they can destroy the confidence of the great rank and file of our movement, in the men at the head of the movement, that the organizations of labor will thereby be weakened and become destroyed. They are evidently laughing in anticipated glee that the working men of our country will then be at the tender mercies of the worst and most greedy element of the entire capitalist class.

839 "We have during our whole lives, as have a very large number of the other active men in the labor movement, conscientiously endeavored to the very best of our ability and with single-minded purpose to aid our fellow-workers, to protect and promote their interests. Honesty and honor has been our guide in dealing not only with the affairs of labor, but with all matters of our workaday lives. We assert without equivocation that there is not one scintilla of truth which may be either charged or insinuated that reflects discredit, dishonor, or dishonesty upon the members and the officers of our great labor movement, and that as our well known bitter antagonists have failed in their attacks upon our local labor movement, their purpose to discredit and destroy the more conspicuous men of our movement will be equally abortive. You know the animus and the purpose of these attacks and you will, we are confident, treat them with the contempt they so richly deserve.

"The suit by Mr. Van Cleve of the Buck's Stove and Range Company against our movement is to deprive us of the right to which we are entitled, the right of free association, free speech, and the freedom of the press, and with all the power which wealth gives our opponents, the exercise of all that power to antagonize our laudable movement and its purposes, they would invoke the aid of the courts and seek to persuade the perversion of law to render futile the lawful and proper means to protect the working people of our country from tyranny, greed and injustices. The full statement of the case and the principles and results involved in this suit of Mr. Van Cleve of the Buck's Stove and Range Company

are fully covered in the report of President Gompers to this convention.

"Attention has frequently been called to the efforts made by labor's opponents to entangle us in interminable litigation with the two-fold purpose of diverting our attention from the necessary work which the officers in the labor movement are required to perform, and also to compel us to large expenditures in defense.

840 "The revenue of the American Federation of Labor is exceedingly meager, accruing from a per capita tax of one-half of a cent per member per month; in other words, six cents per year. With all the organizing and other educational and effective work, there are no funds at our disposal for proper defense, and we, therefore, recommend that this convention provide the ways and means by which such funds may be created as are necessary and essential in the defense of this suit.

"We also recommend that this subject-matter — referred to a special committee to report to this convention at the earliest possible date.

"We Don't Patronize List.

"Applications to indorse the placing of the following firms upon the unfair list of the American Federation of Labor have been made to and approved by the Executive Council from October 1, 1906, to October 1, 1907.

"Buck's Stove and Range Co., St. Louis, Mo. (International Brotherhood of Foundry Employees.)"

841 Knew in a general way that the report contained what has just been read and knew when he made up the report of the proceedings that this report, his and Mr. Lennon's and the Executive Council's report were contained in them.

Witness' attention is called to the following, from page 92 following the report of the Executive Council:

President GOMPERS: The chair desires to state that there are two or three matters upon which the Executive Council will submit a supplemental report later. In the report submitted by the Executive Committee and by the President there were recommendations for the appointment of special committees, one upon the suit of the Van Cleave Buck's Stove & Range Co.; another upon the movement for the establishment of the universal 8 hour day and another upon ways and means of extending the circulation of the American Federationist. The chair asks what is the pleasure of the convention upon these recommendations.

"Delegate HART: I move that the recommendations be concurred in and the Committees appointed."

He is asked if he knew that was in, too—that a committee was to be appointed and says that at the time he supposes he knew what action was taken but does not recollect every action taken.

Mr. Davenport reads from page 95 of the same proceedings the following:

"President Gompers announced the appointment of the follow-

ing committees authorized by motion adopted at the morning session:

"Special Committee on Buck's Stove & Range Co. suit against A. F. of L., Frank Duffy, W. D. Mahon, John P. Frey, D. G. Ramsay, John Fitzpatrick, R. S. Maloney, John T. Demsey, Jere L. Sullivan, George Finger, Con J. Harrington, John T. Smith, S. L. Landers, John A. Moffitt, J. S. Noyes, Emmet T. Flood."

Witness says he is acquainted with most of those names and what Unions they represent.

Frank Duffy represents the United Brotherhood of Carpenters, with an average membership of approximately 192,900 scattered all over the United States and Canada. W. D. Mahon, the Amalgamated Street Ry. Employees' Organization. He was not a member of the Executive Council. Frank Duffy was from the same union as one of the Vice Presidents, Mr. Huber. The Amalgamated Street Ry. Association had 30000 members.

John P. Fry represented the National Molders' Union, with a membership of 45000; D. G. Ramsay, the Railroad Telegraphers, with approximately 15000. John Fitzpatrick is a horse shoer, does not know what labor organization he represents, thinks it is a Central Body; lives in Chicago. Represented the Horse-shoers organization at that time, with membership of 44000. R. S. Maloney represented a central body in Mass. Does not know just where. John T. Demsey represented the United Mine Workers, with 254900 average membership that year. Jere Sullivan represented the Wholesale Grocery Employees, the International Alliance, and the Bartenders' International League, with 36300 members. Finger represented the Brotherhood of Painters, etc., with 62400 members. C. J. Harrington, the Seamen's Union, with 24800 members; John T. Smith, the Cigar Makers' Union, to which Mr. Gompers belongs, with 39900 members. S. L. Landers, the Garment Makers, with 33400 members, and was editor of the Garment Workers' Journal, whether at that time or not is not sure. Knows he was editor only a short time ago.

Does not think the publication had been brought to witness' attention in connection with the Stove Co.

John A. Moffitt was president of the United Hatters of North America, with membership of 8500. Does not recollect J. G. Noyes, Flood, he thinks, belongs to the Teamsters' International Union, with membership of 36600. This was a special committee and undoubtedly reported.

Mr. Davenport submits the report of the Committee from page 213 of the proceedings as follows:

843 "To the Officers and Delegates of the Twenty-seventh Annual Convention of the American Federation of Labor:

"Your Special Committee, to which was referred the subject matter contained in the reports of President Gompers and of the Executive Council relative to the suit brought by J. W. Van Cleave, of the Buck's Stove and Range Company, against the American Fed-

eration of Labor and its officers, and all matters in connection therewith, begs leave to report as follows:

"We have given the reports, the evidence and all other matters in connection with the suit, our deliberate consideration. There is not the least doubt in our minds but that the suit in question, the scurrilous and scandalous campaign of vilification against the officers of our great movement, the rampant antagonism of the worst elements of the capitalist class as manifested in Los Angeles and elsewhere, are all of them of a kind, leading up to and the result of the creation of the million and a half dollar War Fund by the Manufacturers' National Association—raised in the effort to weaken and ultimately destroy the effectiveness of our great movement, our movement which protects and advances the interests of the toiling masses of our country against the greed and aggressiveness of those who seek to profit if the toilers were rendered defenseless.

"We have read with the deepest interest the fundamental principles involved in the Van Cleve suit as set forth in President Gompers' report, both under the caption dealing specifically with the suit and also in that part of the report dealing with the "Injunction abuse." We venture to assert that in no document of a similar kind or in any treaties upon the subject have constitutional guarantees and inherent principles been set forth more clearly, logically and truly than in the President's report.

"There is involved in the Van Cleave Buck Stove and Range Company suit against the A. F. of L. and its officers fundamental rights which strike at the very root of free institutions. The freedom of speech and the freedom of the press are involved; and, as President Gompers so ably and amply sets forth, there are involved the right of man's ownership of himself, his ownership of his labor power, of the wages he receives in return for the exchange of his labor power, and the use to which these wages may be devoted.

"Freedom was never taken from a people by one attack. The process was and is gradual. It is the denial of the rights of one portion of the people at one time, the infringement upon the liberties of another portion at another time, that step by step make inroads into the citadel of freedom and undermine the entire structure.

"So with the injunctive process as typified in the present suit. The attempt to deny to the men of labor the right of the freedom of speech and of the press should not only arouse the resentment of the great masses of our people, but it should appeal strongly to the newspapers and magazines of our times.

"The freedom of the press implies not merely that one shall print and say the things that please. For such a purpose guarantees are entirely superfluous. The constitutional guarantees of the freedom of the press were designed to protect the dissidents, the opponents, in their right not only to protest but to make public that protest in speech and print in an appeal to the people against existing power and conditions. In it are involved the guarantee of the right to say the things that displease, man being responsible for his ut-

terances and never to be enjoined or prohibited from expressing himself.

"The blow in this instance against labor and its official magazine, the American Federationist, may tomorrow in some form be directed against another publication, and though labor may be called upon to bear the brunt and make the contest in the present proceedings, we urge upon the press of our country the consideration of the principle of free speech and free press involved in these proceedings.

"If the rights and the interests of the people are to be protected and defended against modern greed, avarice, chicanery and unlawful power, we cannot, and we will not, surrender or yield the exercise of the liberty of speech, the liberty of the press.

"We protest against and repudiate the theory, either expressed or implied, that there exists any direct or indirect property right in workmen other than by the workmen themselves, and in defense of our position upon these great fundamental principles made sacred by history and traditions, we pledge our united efforts.

"We commend the action thus far taken by the President and the Executive Council, in taking the necessary legal steps to maintain our constitutional rights. Your committee believe it is of vital importance that this suit be fought to a successful termination, and therefore, to raise an available fund for that purpose we recommend that this convention authorize the president and the Executive Council to issue a special assessment of one cent per capita, and that the President and Executive Council aforesaid be further authorized to make such other and further assessments, should occasion require, as they in their judgment may deem necessary.

FRANK DUFFY, *Chairman*,

D. G. RAMSAY, *Secretary*,

JOHN P. FREY,

S. L. LANDERS,

JOHN T. SMITH,

JOHN A. MOFFITT,

EMMET T. FLOOD,

J. G. NOYES,

GEORGE FINGER,

W. D. MAHON,

JERE L. SULLIVAN,

JOHN FITZPATRICK.

Delegate RAMSAY: I move the adoption of the report.

The motion was seconded and carried by unanimous vote of the convention.

846 Delegate Ramsay for the Special Committee, read the following supplementary report:

To the Officers and Delegates of the Twenty-Seventh Annual Convention of the American Federation of Labor:

"Your Special Committee to which was referred the subject matter of the suit of the Buck Stove and Range Company, begs leave to make the following supplemental report:

"Referring to resolution No. 49, hereto attached, by Delegates A. B. Grout and James J. Dardis, of the Metal Polishers, Buffers and Platers Union, relative to a "campaign of education," we fully agree with the purpose of the resolution, but recommend that the details and manner of carrying out the spirit and object of the resolution be left in the hands of the president and Executive Council.

Respectfully submitted,

FRANK DUFFY, *Chairman.*

D. G. RAMSAY, *Secretary.*

JOHN P. FREY.

S. L. LANDERS.

JOHN A. MOFFITT.

JOHN T. SMITH.

JOHN FITZPATRICK.

EMMET T. FLOOD.

GEORGE FINGER.

J. G. NOYES.

W. D. MAHON.

JERE L. SULLIVAN.

"On motion the report of the committee was concurred in."

547 When he made up the report of the proceedings he knew that all reports acted upon were included. Mr. Davenport reads further from proceedings commencing at page 212 as follows:

848 "The Committee recommended the adoption of Resolution No. 49—when amended to read as follows:

"Resolution No. 49—By Delegates A. B. Grout, James J. Dardis, of the Metal Polishers, Buffers, Platers, etc.:

"Whereas The Buck Stove and Range Company of St. Louis, Mo., of which J. W. Van Cleave is president, has attempted to disrupt the Metal Polishers, Buffers, Platers, Brass Moulders, Brass and Silver Moulders, Union of North America, and in pursuance of said object has arbitrarily abolished the nine-hour work day, which has existed in factory for over eighteen months, and instituted a ten-hour work day.

"Whereas, the said J. W. Van Cleave, the president of said company, is also president of the National Manufacturers' Association, an organization which constitutes a small minority of the manufacturers of the country, and which has declared its hostility against all labor organizations, and it was through the recommendations of the said J. W. Van Cleave that the said Manufacturers' Association has undertaken to raise a fund of \$1,500,000 in three years for the alleged purpose of education, but which at the present time is being used under the direction of said J. W. Van Cleave in an attempt to disrupt the labor organizations of the country, especially the Metal Polishers, Buffers, Platers, Brass and Silver Workers' Union of North America, as well as the International Brotherhood of Foundry Employees, with whom his company has a dispute, and,

Whereas, it has come to our knowledge that the funds of the Manufacturers' Association are being expended under the said Van

Cleave's direction for the employment of detective bureaus throughout the United States, who are now conducting a campaign of vilification and slander against the officers and members of labor organizations for the purpose of creating distrust among the entire membership and to deceive and mislead them. Therefore, be it

Resolved, that each central body affiliated with the A. F. of L. be and is hereby requested to appoint a committee who shall conduct and manage a "campaign of education" among the membership affiliated with their central body, as well as dealers in stoves and ranges in their locality, and thoroughly informed them of the entire facts of the dispute between the Metal Polishers, Buffers, Platers, Brass & Silver Workers' Union of North America, the Brotherhood of Foundry Employees, also as to the attitude of J. W. Van Cleave and the Manufacturers' Association towards organized labor.

Resolved that the said committee shall report on the first of each month to the officers of the A. F. of L. the progress of the "campaign of education," together with a complete list of all dealers in their locality who are handling and selling the product of the Buck Stove and Range Company. Be it further

Resolved that all commissioned organizers of the A. F. of L. shall report on the first of each month to the officers of the A. F. of L. the progress made in "this campaign of education" by the different committees of the different central bodies in their respective districts, and also render such aid to all committees as lay in their power.

A motion was made and seconded that the report of the committee be concurred in.

The question was discussed by Delegate Grout and Vice-president Duncan.

The motion to concur in the report of the Committee was carried."

Witness testified he knew all the Resolutions introduced were in the report in a general way. Knew there was a resolution introduced in regard to the Buck Stove and Range Co. Did not when sending out the proceedings to the Secretaries caution them against carrying out this Resolution. The proceedings are never sent out for the purpose of conveying any information in regard to directions given by the officers of the Federation. They are simply a report.

Witness' attention is called to the following Resolution:

"Resolved, that each central body affiliated with the A. F. of L. be and is hereby requested to appoint a committee who shall conduct and manage a campaign of education." And is asked whether in sending out the reports he sent out anything to correct their minds as to this direction. And he responds No, for the reason that the action of the Convention is a direction to the officers of the Federation to do certain things and until the officers give those directions no action would be taken. The proceedings are not instructions to officers of the organization, they are only for information.

Mr. Davenport rereads the Resolution and asks whether the witness sent out to the organizers and central bodies anything to correct or annul in their minds the effect and operation of that resolution. And answers that the proceedings were sent out but the action there taken was not the notice they would have to receive to put that resolution into operation. Therefore there was no necessity of sending out a notice of the resolution.

Witness' attention is called to the following published in the Weekly Bulletin the official organ of the United Garment Workers of America, dated Feb. 14, 1908, Mr. Landers being the editor:

"Minor Editorials.

"Neither Van, nor his ally, Judge Gould,

"And the combined forces of hell,

"Can bridle free speech in this country,

"And the same old story we'll tell,

" 'Boy Cott—noch a mal.' "

851 and says that it was not brought to his attention. He knew nothing about it.

When Justice Gould announced his opinion and signed the order in the Buck Stove & Range Co. case, witness is not sure that he was in Washington at the time, but thinks so. Left the office on the 21st of December, has no recollection when. On the 22nd left for Canada. Has no recollection of seeing Mr. Gompers between September 17th and December 21st. Has no recollection of giving any instructions with regard to the Federationist because he had nothing to do with it. The usual course would be as soon as they were sent over they would be sent out.

Mr. Gompers has general supervision over the Federationist and is at liberty to take care of it. Does not recollect giving any special instructions in regard to the matter. Does not remember that Gompers consulted him about it. Has no recollection of seeing him at all between the day of the filing of the opinion or signing of the order by Justice Gould and the 18th of Dec. The only information he has of Mr. Gompers and Mr. Mitchell being in New York attending a Civic Federation meeting has come out in the testimony since then. Has no independent recollection other than what has come up in the proceedings. Has no recollection of any talk with him about anything between Dec. 17 and Dec. 21 when witness left the office. Understood that the injunction did not become operative until the opinion was filed. Thinks the information came from his attorney. Recollection is that he received the information that Mr. Ralston called up Mr. Darlington about it and wanted to know if it was signed or filed the bond and he stated he had to write his clients in St. Louis and was slow in getting it back. It seems to witness that was the information. Just where it came from he does not now recollect.

Did not leave any instructions when he left the office to go to Canada with anybody connected with the department in his charge not to do anything in violation of the order of Judge Gould. Does not

know what he had in mind at that time other than a desire to get home for the reunion and have a few days' rest. Did not have the injunction in mind especially. Considered that that was to come some time in the future. It would not be necessary for him to give any authorization to Mr. Gompers to send out the January Federationist or issue any instructions to his assistants to obey, if he gave such instructions, because it worked automatically. His people expected to send out the Federationist as soon as it came in and they would go out if Mr. Gompers and himself were not there. Gave no instructions to guard against the possibility of the January Federationist going out after the bond was filed, or take any steps. Thinks in a general way he knew that the Jan. Federationist would contain the unfair list with the Buck's Stove & Range Co. on it but paid no special attention to it.

Did not suggest to Mr. Gompers that it would be well instead of hurrying up the issue to take that name off the list or draw a line through it or manifest a disposition to obey the order of the court because the injunction was not in effect when he left.

Thinks his stopping place in Canada was known to Mr. Gompers. Had no communication with him in regard to the injunction that he recalls. Judges from that he would not bother him with anything going on, that he was off for a holiday for a few days. Came back on New Year's Day. Knows he did not go to the office that day.

Checks and letters signed indicate that he got to the office late on the 2nd or on the 3rd. Is not quite sure. Does not recollect how soon he conferred with his attorneys. Mr. Gompers did most of the conferring. Received the information when he got back to headquarters that the bond had been filed. Does not remember definitely asking the question; was informed. Is not quite distinct in his mind.

The injunction being in operation he saw a bunch of Federationists which had not been sent out and ordered one of the boys to take them down in the vault so they could not be sent out in the usual course, which was to send out all copies over a certain number as sample copies, and he did not want to send out a thousand or so of sample copies. It was his desire to obey the injunction which prevented them from boycotting the Company, and he did not propose to do anything that would aid or assist a boycott.

853 Recollects the name Benedict and that he was in Mr. Darlington's office. Does not remember the witness Benedict. Came back Jan. 1st only remembers Benedict's name being mentioned. Remembers that Darlington said a man named Benedict purchased as couple of copies for him. Thinks it was said in last proceedings.

Witness' office was on the first floor of the Typographical Temple in the front room and Gompers' on the same floor in the rear. There was a hallway extending from the front door to the room where the stenographers were generally. To the left was the room where Miss Gard sat and Mr. Gompers' room was in the rear.

Said he went down the hall and saw a lot of this material—into

the back room. Saw a pile large enough to attract his attention. Has stated he thinks there were 1363 of those Federationists. That was the count made afterwards. Is not sure whether the pile was in the outer hallway or the stenographers' room. His recollection is it was oposite the lefthand door. There were two doors and it was in the shadow of that side of the hall. The hall was wide. Mr. Gompers would have to pass through the hallway and pass the pile. There was another way to get to his room through different doors. Entering witness' office or the office next to it or the office next to that. Unless he took this zigzag course he would either pass over or through this pile. If they were in that corner they would be on the left hand side but there was a wide (indicating) passageway that was straight across from the door down to the stenographers' room.

Took no steps to prevent the Law Reporter Co. from sending the Jan. 1908 Federationist direct to the Washington News Co. Has not ascertained anything about that.

Witness' attention is called to the following extract published in the March Federationist page 216 from the minutes of the monthly executive council meeting:

854

"WASHINGTON, D. C., Jan. 20-25, 1908.

Executive Council called to order Jan. 20 at 10 o'clock, President Gompers in the chair. Present Gompers, Duncan, O'Connell, Morris, Huber, Valentine, Lennon, Morrison, Hayes and Keefe.

"On motion it was decided that the session be held from 9 to 12, 2 to 5 and 8 to 10 P. M."

His attention is also called to part of Pres. Gompers' report on page 218 under the heading Resolution 49 as follows:

"In conformity with the provisions of this resolution circular was issued on Nov. 26 to all affiliated organizations in regard to the suit brought by Mr. Van Cleave for the Buck's Stove & Range Co. against the A. F. of L. its E. C. and others. The E. C. has been kept advised from time to time what steps have been taken in this matter.

"With your consent I have retained Alton B. Parker as Senior counsel to act with Messrs. Ralston & Siddons in defense of labor's rights in this case. Our position and attitude in the case are fully set forth in the editorial which I have written and which will be published in the Feb. issue of the American Federationist, which I shall lay before you before adjournment," and is asked what the circular issued on Nov. 26 was. He answers that he recalls from the testimony that has been received to have read the circular since the matter became a matter of record. Prior to that it had not attracted his attention.

Recalls a meeting in the office of Ralston & Siddons when Judge Parker, Mr. Spelling himself and Mr. Gompers were present. Does not recall Mr. Davenport being there.

The oath he took in joining the typographical union has been enlarged since he took it. Was amended at the 1896 convention. Believes he could get the oath from Chicago if they have an old constitution. Indicates to Mr. Davenport the part he thinks he

took. Thinks he helped put in the addition- part in 1906
855 in the convention. Took the part interjected in 1896 and
made a motion that the courtesy of receiving that obligation
be extended to the ex-delegates. The oath was read as fol-
856 lows:

"I (give name) hereby solemnly and sincerely swear (or affirm) that I will not reveal any business or proceeding of any meeting of this or any subordinate union to which I may hereafter be attached, unless by order of the Union, except to those whom I know to be members in good standing thereof; that I will, without equivocation or evasion, and to the best of my ability, abide by the constitution, by-laws, and the adopted scale of prices of any union to which I may belong; that I will at all times support the laws, regulations, and decisions of the International Typographical Union, and will carefully avoid the giving aid or succor to its enemies, and use all honorable means within my power to procure employment for members of the International Typographical Union in preference to others; that my fidelity to the union and my duty to the members thereof shall in no sense be interfered with by any allegiance that I may now or hereafter owe to any other organization, social, political, or religious, secret or otherwise; that I will belong to no society or combination composed wholly or partly of printers, with the intent or purpose to interfere with the trade regulations or influence or control the legislation of this union or the election of its officers; that I will not wrong a member, or see him or her wronged, if — my power to prevent. To all of which I pledge my most sacred honor."

857 Witness is asked if he recognizes the oath as binding upon his conscience now and responds yes as he understands it. He would like to explain. Prior to 1896 it was asserted that there was in the membership of the organization a secret organization composed of printers' Councils in many cities for the purpose of controlling legislation and favoring employment. The witness with others believed the union card should be the only guarantee and no other influence should be used.

Attended the 1896 Convention and assisted in having adopted an obligation that all the delegates should take is not sure of the wording but thinks it is as follows:

"I (giving delegate's name) solemnly swear or affirm that I do not now belong nor will I belong at any time in the future to any society or combination, composed wholly or partly, of members of this international typographical union or any other union under its jurisdiction, the intent and purpose of which is to interfere with the trade regulations or influence or control the legislation of this or any other union or the selection or election of any officer or officers."

This was adopted. Delegates to the convention took the obligation, some 13 delegates received it. This obligation has been greatly misunderstood. Recalls a conversation with President Roosevelt calling attention to the fact that it was incorporated in

our obligation to prevent members of the union forming cliques for the purpose of controlling legislation, election of officers and distribution of situations.

Regards the statement in the oath that "my fidelity to the union and my duty to the members thereof shall in no sense be interfered with by any allegiance that I may now or hereafter owe to any other organization, social, political or religious, secret or otherwise," as obligatory upon his conscience. That allegiance means that if a man belongs to a particular church, political body Ancient Order of Hibernians, Knights of Columbus or to the Masons, or
 858 any other fraternal organization his affiliation with those organizations shall not be used to discriminate against members of the union in favor of men belonging to his organization, his political party or affiliations.

In other words a labor union is the one place where they stand man to man all for all.

By Mr. RALSTON:

Has nothing to do with Governmental organization but to do with possibility of 20 Republicans being in office and preventing a Democrat from getting a situation or vice versa, or letting a lot of Methodists in one office control the situation and only methodists be employed. It impressed upon members the necessity of stripping themselves of all prejudices. To have no prejudices against nonunion men in the sense of prejudice. We say "you ought to come in and assist in bettering the conditions. If you do not you are injuring yourself." We have no feeling, we only regret they do not come in. It is a matter of education, persuasion and good will. There is no feeling, if the man is a non-union man and wants to come in witness has no feeling against him because he is a nonunion man. If the man took the obligation and violated that he would lose confidence in him and not think as much of him as he would a nonunion — who had never come into the fold. We recognize the right of men to come into the union or stay out of the union as his legal right.

The obligation was referred to one of the archbishops by some of the Catholic members and witness thinks it was passed on by him as Satisfactory and did not interfere with members who belonged to his church.

859

FEBRUARY 15, 1912.

Cross-examination of FRANK MORRISON (continued):

(Page 1759.) Was informed that the oath taken by members of the Typographical Union had been submitted to the Archbishop of the Roman Catholic Church. Does not know what Archbishop James J. Murphy, of New York, informed him. Does not know of his own knowledge that on repeated occasions this oath had been denounced from the altar in the Roman Catholic Church, and the Sacrament refused to those who had taken it. Knows that that proposition was raised in the case of some particular priest, he thinks

in Nebraska, or that part of the country, but it was the individual act of the priest, and this oath has been in effect since 1896, and there are thousands of good Catholics that have taken the oath where the question has not been raised with them in their church. Is not a Catholic and does not know of his personal knowledge, only knows there are thousands of Catholics that have taken the obligation, and they have not been required to refuse to take it, so far as he knows.

In answer to the question, "Do you consider the nation to be a social and political organization entitled to receive and demand the allegiance of its citizens," the witness finds difficulty in answering the question, in that he does not know quite what the examiner means by "political and social." Looking at it from his standpoint, he recognizes that as a citizen, he owes allegiance to the government of this country. As to whether government means political and social organizations, he does not feel informed, and would like if the Court would explain just what "government" means. Always thought that "political" meant political bodies. Never confused the word "political" with government. Takes the word
860 "allegiance" in the oath to mean loyalty, perhaps. Has never until last night looked up the finer shading of the word "allegiance." Has always considered "allegiance" as fidelity to or devotion to or loyalty to. In his understanding, the oath does not place the obligations of the members of the union above the obligations of that same individual to his church. It does not according to the construction he puts upon it, and as bearing upon his conscience, include the organized society, known as the United States. Considers that each Justice of the Supreme Court in taking his obligation under Section 712 of the Revised Statutes, cannot neglect, evade or turn aside therefrom.

The initials "E. C." contained in the March, 1908, Federationist, commencing on page 217 in President Gompers' report, stand for Executive Council. Witness's attention is called to the September, 1908, Federationist, page 680, containing the 14th paragraph of the charge preferred against witness, Gompers and Mitchell, and to his answer to that charge, filed September 9, 1908, and to Resolution No. 49, and says that the circular therein referred to, is the one referred to in the report, referring to "Resolution No. 49," and is included in the petition of the Buck's Stove & Range Company. Referring to the words, "The E. C. has been kept advised from time to time what steps have been taken in this matter," witness says that he received no information from Mr. Gompers as to what had been done, or what steps had been taken, and does not recall whether he orally at that time disclosed to him what steps had been taken.

There is read to the witness from the September, 1908, Federationist, commencing on page 674, paragraphs 7, 8, 9, 10, 11
861 and 12 of the charges in the former contempt proceedings, and witness's answer thereto, which answer reads as follows:

"7, 8, 9, 10, 11, 12, 13. Answering the Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, and Thirteenth paragraphs of the peti-

tion, this respondent admits as to the publications on personal knowledge and as to the speeches therein referred to on information and belief the substantial correctness of the statements therein contained, but for greater accuracy refers to the publications themselves; but he does not admit the statements of intent associated by the petitioner therewith, and is advised by counsel that it is unnecessary for him to make further or more specific answer to said paragraph, this respondent not being connected or associated therewith."

and witness is asked if he wished the court to believe that from and after the moment the bond was filed which made the injunction operative, he individually and as an officer, Mr. Gompers individually and as an officer, Mr. Mitchell individually and as an officer, and the American Federation of Labor, in good faith, abandoned, once and for the time being at any rate, the prosecution of that boycott that was restrained, and witness answers, yes.

Witness did not take any steps to prevent the continuance of the boycott. So far as the officers of the Federation were concerned, witness says in good faith, the boycott was terminated, and so also with the Federation of Labor and its officers. The Buck's Stove & Range Company brought witness into court. Did not inform it that the boycott was terminated, or the counsel for the company that it was at an end. Did not take any action to inform the 27 000 unions circularized by the circular read, of November 26, 1907. Did not take any action with regard to that circular issued November

26th. The only action that was taken was the striking off
862 of the Buck's Stove & Range Company from the "We Don't Patronize" list, and the general publication that the boycott had been enjoined, that the officers of the Federation had been enjoined from prosecuting the boycott against the Buck's Stove & Range Company.

Advised President Gompers to take the name from the "We Don't Patronize" list in the Federationist after witness returned. Did not advise him before. Did not know that he was at that time purposing to publish it. Does not recollect that he went to people and asked them to intercede with Mr. Gompers not to prosecute that boycott any further. Recollects that he spoke to Mr. Gompers and that he thought the name should not be published in the list. Whether or not he had any intention of publishing it, witness does not know. Does not know when it was decided to take it out. Mr. Gompers had control over that. Does not know the day when Judge Parker was retained in the case. Cannot state by the cash account the date. Does not know the date of his retainer. Has no recollection as to the date, President Gompers may have some recollection.

Has no recollection that Judge Parker came here to Washington in connection with Executive Council meeting held, to which witness's attention has been called. Knows that he was here. Does not recollect that he took counsel with anybody about the propriety of taking the name out of the "We Don't Patronize" list which was to appear in the February Federationist. Felt that it should be
taken out.

(Page 1780.) Has no recollection of writing any letter to any officer of any union which declared then that the programme was altered by the injunction. Witness has read extracts from the circular of November 26th, and says that that is one of the circulars issued in matters of that kind, and he considers it a statement of fact and of rights. If a letter came in to witness, asking if they were enjoined, he probably would tell them so. He would probably tell them that they were enjoined from boycotting the Buck's Stove & Range Company. Judging from what Mr. Davenport has stated here, and has read, witness simply notes an enumeration of facts which had been set out for their information, and did not suppose anybody could compel him to patronize them if he did not want to. Did not suppose he did not have the right to spend his money lawfully in the commerce of the country if he wanted to. Did not suppose, and has been advised that no court has the right or power to issue an injunction restraining him from exercising certain constitutional rights, including publication, speech and freedom of conscience to worship in accordance to the dictates of one's heart or conscience. It seems to witness he has the right if he has a grievance, to tell it to anybody who will listen. Did not believe that the injunction that prevented the continuance of a boycott was valid. Believe that so much of the injunction as restrained the exercise of free speech and free press was void, and that contention was upheld by the District Court of Appeals, which modified the injunction to the extent of permitting free press and free speech even to the extent of stating that probably the publication of the name on the "We Don't Patronize" list might be considered to further a boycott. Wants the court to understand that he regards the injunction, so far as it prohibited the prosecution of the boycott, as perfectly valid, and because he regarded that part as valid, he obeyed it. Wants to the court to understand that he believes that so much of the injunction as restrained free speech and free press was void. The validity of the part that he obeyed, he did not know about. That was a matter with which they were contending in court, to find out just what their rights were. They were contending in court about the whole of it, but the contention was to get this whole matter before the Supreme Court of the United States to find out to just what extent injunctions could be used. That was going there any way by their appeals. To the question whether the witness had to violate one single word of the injunction in order to raise the question of its validity before the Supreme Court of the United States, the witness answered that it seemed as if the whole injunction would be put into operation. It was understood that their attorneys would not have been able to file a bill or a defense, particularly when they found the publication of the decisions of the court used as a part of the charges.

Witness's recollection is that when he got back from Canada, he found a very large quantity of the Federationists in the hall; 1363 by count, furnished him afterwards. The information he got was that 7500 copies had been printed. Told them to take those and put them in the vault, under lock and key. Thinks they were

locked, is not sure. In his investigation, the information he got was that there was some thirty-seven copies that went out during those months. Instructed one of their boys to take all the Federationists and put them in the vault, so they would not *not* go out. Took it for granted that the balance was in that bundle. There were 1763 not disposed of. Thought it was better to take and keep them there and not send them out, rather than take a pen and draw a line through that name in the unfair list, or paste something over it, and send these out to the unions, with the notice that it contained thereby that they had stopped the boycott and abandoned it.

865 Probably if he had run a pencil or pen through it, Mr. Davenport would come in and say that it was not obliterated, and only attracted more attention than if it had not been marked at all.

Has no recollection now of being at Mr. Ralston's office with Mr. Darlington and — Davenport. Remembers being there when Messrs. Gompers, Parker, Spelling and Ralston were there. Has no distinct recollection of being there with Mr. Darlington and Mr. Davenport.

The Executive Council authorized the issuance of the "Urgent Appeal" and left it to the resident members for the purpose of submitting it to the attorneys to see if there was anything in it that would injure the test case that they had in court.

(Page 1789.) The editorial and the "Urgent Appeal" were both published in the Federationist for February 1908. Does not think Judge Parker was here at that time. When the "Urgent Appeal" was prepared, he showed it to the firm of Ralston & Siddons. Does not know why he did not submit it to Judge Parker, except that he was not here at the time.

(By the Court:)

Talked it over with the firm of Ralston & Siddons himself and talked with them at different times in regard to it. Whether Mr. Gompers submitted it too, does not know. Does not now recollect. Discussed the circular with both Ralston and Siddons. Was under the impression that he was complying with instructions to have attorneys act on it. Is not sure, but believes he had a proof of the circular when he was talking with them. To the best of his recollection, he discussed it with both Ralston and Siddons.

866 (Page 1791.) Had no special reason why it was not submitted to Judge Parker or Mr. Spelling, so far as he was concerned. Did not confer with them with regard to the editorial—simply the "Urgent Appeal". Did not submit the editorial to Messrs. Ralston & Siddons. His understanding was that the editorial was a statement of respondents' case, and it was published in the Federationist, and was all right. Does not know that he has any specific recollection of just what was in the editorial. Has no doubt it was sent out. Does not recollect just exactly what was in it. Does not recollect other than it seems to witness to be a good clear explanation of the case, and demonstrating a good reason why the unions should appropriate money to carry it to the Supreme Court of the United States.

Witness's attention is called to the report of Gompers to the Executive Council Meeting held January 20 to 25, under the heading of Resolution No. 49, stating that he had retained A. B. Parker and Ralston & Siddons in defense, and that respondents' position and attitude were fully set forth in an editorial written and to be published in the February issue of the Federationist, and which Gompers was to lay before the Executive Council before adjournment; and is asked if it was so laid before them, and its sending out authorized, and states that he has no recollection other than what has come to him since he read it. Had it reprinted for the purpose of explanation of the reasons why the funds were wanted. Does not recollect any authorization of the members of the council in regard to the editorial. When anybody came in and addressed the envelopes, they were paid so much per day. The fact that entries, aggregating \$152.92, for addressing, stamping, folding and mailing circulars, Buck's Stove & Range Company case, was under date of January 29th, shows that this was done during the week of that Saturday. Sent out the circular and the editorial for the purpose of raising funds to pay the legal expenses in this case, and for the purpose of getting relief from injunctions, either through a court decision or through the enactment of anti-injunction legislation, or through amendment to the Sherman anti-trust law.

Made a report to the November Convention of 1908 in reference to the receipts and expenditures of the money collected by witness through the issuance of that appeal. The only call was for money to conduct the defense in that case,—for the defense of the case before the courts, and to secure funds to prosecute the case to the Supreme Court of the United States.

(Page 1797.) Does not know who induced Honorable William Sulzer to introduce in his speech what is copied from the American Federationist. Is inclined to think he introduced it himself. The matter was either made a public document, or was suggested, and when it was brought to the attention of witness's people, 30,000 were ordered. Witness's recollection is that he suggested the order of 30,000. His recollection of what led up to it, is very indistinct. Only knows that it is common practice for public documents to be sent out in that way with a Congressman's speech. It will be noticed that the last part makes quite a strong statement in favor of organized labor, introduces President Gompers' editorial "Labor Organizations must not be outlawed; the Supreme Court's Decision in the Hatters' Case," and another editorial by President Gompers, which includes the Supreme Court decision in *Loewe vs. Lawler*, and the interest witness had in that was particularly the editorial containing the Hatters' decision, which they wanted their people to know about, and witness also appreciated what Mr. Sulzer had to say in regard to labor organizations, and supposed he would be satisfied to have our people know that he had said those things.

Witness's recollection is that it was printed at the Government Printing Office, and thinks it was sent out under Congressman Sulzer's frank, to the secretaries of the local unions of the internationals of all affiliated organizations, and all organizers and labor

press. Might have been sent to the subscribers of the American Federationist, but does not recollect now. The 30,000 were disposed of in the way stated. There may be a few left in the office, but very few.

(Page 1798.) That article was published in the March, 1908, Federationist, on page 180. The issue of the March, 1908, Federationist was sent out from the office. Supposes there were about the same number that had been previously sent out, 7,000, or 7,500. Has no recollection of any change being made as to the number.

Witness's attention is called to the following on page 192 of the March Federationist, following the editorial to which he has referred, and which is embraced in Mr. Sulzer's speech:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's Stove or Range, no, not even to buy a Loewe hat."

Witness says that he does not know that he read even that editorial. Read only Sulzer's speech. Sent out the Federationist. Has no recollection of reading the editorial quoted.

Would consider it simply a statement of a fact. In sending out that Sulzer speech it was not for the purpose of aiding or abetting a boycott on the Buck's Stove and Range Company, and witness was not aware of the fact that it was in there. Has no recollection of observing the sentences quoted in the editorial as quoted in the speech. The only part he read was the part of his speech at the last page. The money which paid for the printing of that speech of Sulzer's came from the funds from the appeal for the appropriation that was issued, called the "Urgent Appeal." None of that money was used to prosecute a boycott against the Buck's Stove and Range Company. The issuance of that speech and the other circulars was for the purpose of securing remedial legislation in Congress, and that purpose only. Witness was not aware that those three or four lines were in the editorial—in the speech. Did not read it. Read only the last part of it. Knew that it contained a statement of President Gompers in regard to the Hatters' case, and the decision, and they were working to secure an amendment to the Sherman anti-trust law, and also anti-injunction legislation. The words quoted were a statement of fact, and witness does not know of any law compelling him to buy any article fair or unfair if he does not want to. That was not intended for the purpose of aiding or abetting a boycott. Can conceive of a more direct way of aiding and abetting a boycott, but in doing so does not admit that it was the intent and purpose of that publication. It was simply a statement of fact. If they wanted to boycott the Company, they would have written a circular to the local unions stating that they were unfair and should be treated as unfair firms should be treated.

Such a method would be more effective than the publication of the lines quoted, because it would be direct information. Since witness has been Secretary of the A. F. of L. he has not been guilty of doing anything indirectly. Has not been guilty of subterfuge or sneaking around in an underhand manner, doing that which he could not do openly. That was not the policy of the Fed-

eration or the officers of the A. F. of L. They represent nearly two million members. Their actions are not only open and above-board, but are published and they must make their reports to their conventions, and they have to stand the test not only of the members, but of public opinion.

(Page 1805.) The January 1908 We Don't Patronize List contained the name of the Buck's Stove and Range Company. In the February, 1908, Federationist, the name disappeared.

Mr. Davenport reads to the witness from the February, 1908, Federationist, page 102, as follows:

"This injunction cannot compel union men or their friends to buy the Buck's Stoves and ranges. For this reason the injunction will fail to bolster up the business of the firm which its claims is so swiftly declining.

"Individuals, as members of organized labor will still exercise the right to buy or not to buy the Buck's stoves and ranges. It is an exemplification of the saying that, 'You can lead a horse to water, but you can't make him drink,' and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not to purchase the Buck's stoves and ranges."

From the March, 1908, Federationist, page 192, as follows:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

From the April, 1908, Federationist, page 279, as follows:
871

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor, to buy a Buck's stove or range. No, not even to buy a Loewe hat."

From the April, 1908, Federationist, page 296, official circular of March 20, 1908, as follows:

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove & Range Company of St. Louis.

"Fellow workers, be true and helpful to yourselves and to each other. Remember that united effort in cause of right and just must triumph."

"Samuel Gompers, President American Federation of Labor; attest Frank Morrison, Secretary."

From the May, 1908, Federationist, page 83, statement by Mr. Gompers, as follows:

"I want to assure you on my word of honor that so long as I live I will never buy a Loewe hat or a Buck's stove or range until these gentlemen come into agreement with organized labor and grant us conditions of fairness. Then they will get support and help. Until then, you may call it by any other name—boycott or no boycott—but I won't buy your hats anyhow."

From the June, 1908, Federationist, page 467, as follows:

"I might say just parenthetically about the hatters' case that you are not now permitted to boycott the Loewe hats but I want to call your attention to the fact that there is no law compelling you to

wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. This applies equally to Mr. Van Cleave's stoves and ranges. And, by the way, I don't know why you should buy any of that sort of stuff. I won't; but that is a matter to which we can refer more particularly in our organizations."

From the July, 1908, Federationist, page 531, as follows:

"The Supreme Court of the District of Columbia has made permanent the injunction issued by Justice Gould enjoining the American Federation of Labor, its officers, its affiliated unions and their members and friends from declaring that the Van Cleave 872 Buck's stove and range company of St. Louis is on the unfair list of the American Federation of Labor or the publication of that statement in the American Federationist. An appeal will be taken to the Court of Appeals of the District of Columbia, and if necessary to the United States Supreme Court. The injunction does not compel anyone to buy the Van Cleave's stoves and ranges, nor has any decree been issued compelling anyone to buy Loewe hats."

Witness is asked whether in view of these repeated statements he says that Mr. Gompers abandoned the boycott. In reply witness says (page 1808) these publications of speeches and editorials were something he had a right to do—to comment; to publish a statement of facts and furnish to his readers such facts as he, as an editor, believed they should have. So far as witness knew, or was informed what he was doing in his editorials and otherwise, was for the purpose of forwarding an effort to secure legislation and carry this case to the Supreme Court of the United States. Referring to the editorial of March 20, 1908, contained in the April, 1908, Federationist, pages 295 and 296, under the heading "Official," containing the following:

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave's Buck's Stove & Range Company of St. Louis.

"Fellow citizens, be true and helpful to yourselves and to each other. Remember that united effort in cause of right and just must triumph."

witness says that there would be something like 600 copies sent out. Has no recollection of it just now.

"Q. The month of April was a very busy month down at headquarters, was it not, in the matter of circularizing the unions? A. That is, April, 1908?

Q. The month of April, 1908? A. Yes sir; we sent out 873 over 3,000,000 circulars to our affiliated organizations for the purpose of—

Q. (Interposing.) Well— A. (Interposing.) Just wait a minute—

(Continuing:)—for the purpose of informing our members of the effort to secure legislation, and in the one circular and resolution that was drafted for the purpose of the local unions to—as a simple resolution, it was drafted for them to send to Senators and Congressmen. It contained a resolution as follows:

"Resolved that, though protesting against the construction of the laws by the decisions of the Supreme Court applying laws to the workers never intended by Congress for that purpose, we yet accept and obey them, thereby demonstrating incontestibly our patriotism, our law abiding purpose, and our faith in the institutions of our country, but we must and do insist that Congress exercise its power and perform its plain duty, granting the relief and remedy from the injustice of which we complain".

Then there are resolutions in regard to the——

Q. (Interposing.) Mr. Morrison, I do want to stop this if I can.
A. There were other resolutions.

Q. I do want to stop this if I can, in the interest of time.

Mr. DAVENPORT: Read the question, Mr. Stenographer.

(The stenographer (reading): "The month of April was a very busy month down at headquarters, was it not, in the matter of circularizing the unions?")

Thereupon the following occurred:

Q. (Interposing.) It is not necessary on cross examination for you to do it; but I do not want to cut you off, if you think it relieves you from anything in your present predicament.

Mr. RALSTON: I object to that language, if your Honor please, and move that it be stricken out. I think it is entirely improper.

The COURT: The motion is overruled.

Mr. RALSTON: An exception is noted.

(Page 1812.) All the unions in each city affiliated to organizations holding a charter from the American Federation of Labor are entitled to be represented in the central bodies, and a great proportion of them are. We consider the central bodies and city bodies for the purpose of securing legislation and also being helpful in looking after the interests of the unions in each city.

Does not know that he read the circular before it was sent out. It is a circular which it is the President's duty to send out in regard to resolutions and actions of the convention, and a circular which in the form they had, was always attested by the Secretary. It usually goes through the witness's hands, and he had to have it printed. There are circulars that go over sometimes, he does not have to have printed. Had to pay the people for addressing it. Paid for the printing and publishing and draws checks for all that matter.

Distributed about 7,000 to 7500 of the April, 1908, Federationists. Witness's attention being called to the following language:

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove & Range Company of St. Louis.

"Fellow workers, be true and helpful to yourselves, and to each other. Remember that united effort in cause of right and just must triumph."

says that he considers it a statement of fact, and after hearing it read still says that to the best of his knowledge and belief, Mr. Gompers abandoned the boycott on December 23, 1907.

Witness says that he had no connection with the prosecution of the boycott after he returned from Canada on the first or second of January, 1908. Could conceive of a more effective mode of prosecuting a boycott than by the use of the words quoted. As for instance, by circularizing organized labor in regard to the unfairness, saying that the product should not be purchased, and urging friends not to purchase it—something that the Federation, of course, has not done, other than to place the name on the "We Don't Patronize" list. They are not engaged in boycotting. This was simply an incidental to the labor movement.

876 There is read to the witness from the report of the proceedings of the A. F. of L., held at Pittsburg, Pennsylvania, November 13 to 25, 1905, page 201 of the proceedings, as follows:

"Delegate MILLER: The We Don't Patronize List is growing year by year. It is true that a few are satisfactorily settled every year, but not a sufficient number to justify the present methods of this department of the American Federation of Labor. In the opinion of the committee, one of the reasons for this unsatisfactory result is that it seems a number of organizations that secure an endorsement to place a corporation, firm or person on the We Don't Patronize list considered this sufficient to insure success and make no further effort to push those boycotts. Therefore, we further recommend that the Executive Council be requested to investigate the methods adopted and carried out by the organizations directly involved in these boycotts, and if they find that the organizations most interested are not exerting a reasonable effort and properly agitating such boycotts, they shall be authorized to remove from the We Don't Patronize list such corporations, firms or persons. We would further recommend that all state federations and central bodies take immediate measures to curtail their unfair lists, and concentrate all their efforts in placing the ban of unfairness upon the smallest possible number.

"Many of the local declarations of unfairness are endorsed on the spur of the moment, often without a thorough investigation.

"We must recognize the fact that a boycott means war, and to successfully carry on a war, we must adopt the tactics that history has shown are most successful in war. The greatest master of war said that 'War was the trade of a barbarian and the secret of success was to concentrate all your forces upon one part of the enemy, the weakest, if possible.' In view of these facts, the committee recommends that the state federations and Central bodies lay aside minor grievances and concentrate their efforts and energies upon the least number of unfair parties or places in their jurisdiction. One would be preferable. If every available means at the command of the state federations and central bodies were concentrated upon one such and kept up until successful, the next on the list would be more easily brought to terms, and within a reasonable time none opposed to fair wages, conditions or hours, but would
877 be brought to see the error of their ways and submit to the inevitable.

"Under the present system our efforts are largely wasted and our

ammunition scattered. Let us reduce the boycotts to the lowest possible number and concentrate our efforts upon those, and we feel certain better results would be obtained.

"Owen Miller, Henry C. Barter, Mrs. Mae Keough, W. H. Drinkwater, Jacob Tazelaar, H. L. Eichelberger, Hugh Frayne, Harry McCloskey, E. W. Leonard, T. A. Means, Committee.

"It was moved and seconded that the report of the committee be adopted as a whole as amended. (Carried)."

(Page 4817.) Witness says he had no recollection of that resolution being adopted until it was submitted in this case. Cannot tell how many copies were printed and distributed of that issue. Could not like even to make a guess—several thousand. Position of the Federation is that the tenor of this was really a recommendation to the organizations to be careful in placing boycotts on firms and indiscriminate boycotting—limiting it. That is its purpose as witness understands it after hearing it read. Has in mind the general purposes of the Federation have been always to prevent boycotts if possible, and not to approve them if they could be avoided, and to use every endeavor to settle the differences between employers and employees. Judges the purpose was to take off as many of the names from the We Don't Patronize List as possible. The September, 1910, American Federationist, was distributed from the office by witness.

Witness's attention is called to the following appearing on pages 807 and 808 of the September, 1910, Federationist, under the side heading, "Buck's Stove & Range Company's agreement with organized labor."

878 *Buck's Stove and Range Company's Agreement with Organized Labor.*

By an agreement reached at Cincinnati, Ohio, July 19, 1910, the industrial dispute between organized labor and the Buck's Stove and Range Company of St. Louis came to an end.

The following is a copy of

The Agreement.

A conference was held at the office of the International Molders' Union of North America, 707-712 Commercial Tribune Building, Cincinnati, Ohio, on the 19th day of July, 1910, in which the following participated: William H. Cribben and Thomas J. Hogan, representing the Stove Founders' National Defense Association; Joseph F. Valentine and John P. Frey, representing the International Molders' Union of North America; T. H. Daly and Charles R. Atherton, representing the Metal Polishers, Buffers, Platers and Brass Workers' International Union of North America; Frank Grimshaw and J. H. Kaefer, representing the Stove Mounters' International Union; George Bechtold, representing the International Brotherhood of Foundry Employes; and Samuel Gompers, representing the American Federation of Labor.

The conference was held for the purpose of considering ways and means for adjusting the dispute between the various organizations of labor and the Buck's Stove and Range Company of St. Louis, Mo., Messrs. Cribben and Hogan being authorized by the new manager of the Buck's Stove and Range Company of St. Louis. Messrs. Cribben and Hogan, for the new manager, declared that he is the supreme authority for the company; that he expects to be in the active management thereof, and as Chairman of the Board of Directors is the highest official of the company; that every one of his associates in the directory and in the management of the company will be loyal to his views; that his position with reference to organized labor is that it is an institution which has come to stay for all time and that it has to be treated with wisely and conservatively, and upon a friendly basis, and that these views and this attitude has always been his, and that the feeling and action of every one connected with the Buck's Stove and Range Company will henceforth be in this direction.

The representatives of labor expressed themselves as being in entire accord with these expressions and declarations, and stated that there is no feeling of antagonism to the Buck's Stove and Range Company, and that under its new management a friendly understanding may be reached and an agreement made by which
879 all may co-operate to the mutual advantage of the company and organized labor. To that end the following memorandum of agreement was made:

1. Within thirty days the officers of the organizations herein named shall meet with the manager of the Buck's Stove and Range Company at St. Louis, Mo., for the purpose of determining wages, hours of labor, and conditions of employment of the workers in the departments which they respectively represent.

2. That the agreement in regard to wages, hours, and conditions of employment shall take effect ninety days from the date thereof, based on wages and conditions existing in shops of competitors in the city of St. Louis, Mo., operating union shops, fair conditions being the purpose of this agreement.

3. That the labor organizations in interest herein named shall jointly make known and publicly declare that all controversy or difference with the Buck's Stove and Range Company of St. Louis has been satisfactorily and honorably adjusted.

4. That the Buck's Stove and Range Company, through its representatives, Messrs. Cribben and Hogan, agree that it will withdraw its attorneys from any case pending in the courts, which have grown out of the dispute between the American Federation of Labor, and any of its affiliated organizations on the one hand, and the Buck's Stove and Range Company on the other, and that the said company will not bring any proceedings in the courts against an individual or organizations growing out of any past controversies between said company and organized labor.

5. That a copy of this memorandum and agreement will be published in the next issue of the official journals of the organizations participants in this conference, and in printed form placed conspic-

nously in the several labor departments of the Buck's Stove and Range Company. And as far as practical, every publicity be given to the satisfactory agreement reached between the Buck's Stove and Range Company and the American Federation of Labor.

For the Buck's Stove and Range Company and the Stove Founders' National Defense Association: Wm. H. Cribben, Thos. J. Hogan.

For the International Molders' Union of North America: Jos. F. Valentine, John P. Frey.

For the Metal Polishers, Buffers, Platers and Brass Workers' International Union of North America: T. M. Daly, Chas. R. Atherton.

For the Stove Mounters' International Union: Frank Grimshaw, J. H. Kaefer.

For the International Brotherhood of Foundry Employés: George Bechtold.

For the American Federation of Labor: Samuel Gompers.

This agreement was printed and immediately a copy was sent to each union, organizer, and the labor press of the country.

The officers of the organizations, as provided in the agreement, will shortly meet with the new manager of the Buck's Stove and Range Company at St. Louis and agree upon the wages, hours of labor, and conditions of employment. The company will then begin its industrial operations in agreement with organized labor. In view of the history, experience, and declarations of the new management of the company, there exists no doubt that a satisfactory agreement as to these conditions will be reached without difficulty.

The new relations of the company and organized labor were referred to the Executive Council of the American Federation of Labor for consideration and action and the President of the American Federation of Labor was authorized and instructed to issue the notice printed as a frontispiece in this issue of the American Federationist.

And thus ends one of the most noted industrial disputes in the history of labor.

880 Witness is asked if he knew of the existence of the foregoing in the September issue when it was published, and says he does not know that he especially knew that, but supposes he did, because he knew that the industrial dispute between the Company and the organizations in interest had been adjusted, and that, he thinks, President Gompers was with the representatives of the organization when it was adjusted.

The attention of the witness was also called to the following on the front page of the same issue:

Official Notice,

Headquarters of the
American Federation of Labor,
Washington, D. C.

JULY 29, 1910.

To all whom it may concern:

An honorable agreement has been reached between The Buck's Stove and Range Company and the American Federation of Labor and its affiliated organizations primarily interested.

The long drawn out industrial dispute has been adjusted.

The new management of the Buck's Stove and Range Company has always been, is now, and proposes to continue friendly to organized labor.

Labor in its struggle for the workers' rights earnestly seeks agreements with employers who are fair minded, and fair in their attitude toward and dealings with organized labor. Such is the position of the Buck's Stove and Range Company and the American Federation of Labor. The Company is now entitled to, and should receive, the courtesy, consideration, and patronage which Labor, its friends and sympathizers can give it.

Secretaries are requested to read this notice at the meetings of their respective organizations and labor and reform press please copy.

By order of the Executive Council:

SAM'L GOMPERS,

President American Federation of Labor.

Attest:

FRANK MORRISON,

Secretary American Federation of Labor.

881 Witness is asked whether that action was taken by the Executive Council of the A. F. of L., and says that he has no special recollection in regard to it just now. The records will show. Does not recollect its publication in the journal especially. Thinks such a circular was sent out to all the unions, but is not sure, notifying the organizations that the industrial dispute between the Buck's Stove and Range Company and these organizations had been settled.

Witness's attention is called to page 278 of the proceedings of the 31st Annual Convention of the A. F. of L., held at Atlanta, Georgia, November 13 to 25, 1911, as follows:

Injunction - Contempt and Retrial.

Under this heading the President gives a summary of the development of the Buck's Stove and Range Company case. The Supreme Court, in finding that an agreement had been reached between the "Buck's Stove and Range Company" and the American Federation of Labor, refused to consider the appeal submitted by the A. F. of L. against the issuance of the injunction, as well as the Buck's Stove and Range Company's appeal against the modification thereof and dealt purely with the question of contempt.

The Court reversed the decision of Justice Wright which had been affirmed by the Court of Appeals and sent back the case to the lower court in the following language:

"The judgment of the Court of Appeals is reversed and the case remanded with directions to reverse the judgment of the Supreme Court of the District of Columbia and remand the case to that court with direction that the contempt proceedings instituted by the Buck's Stove and Range Company be dismissed, but without prejudice to the power and right of the Supreme Court of the District of

Columbia to punish by a proper proceeding contempt, if any, committed against it."

Justice Wright immediately called the attorneys for the Buck's Stove and Range Company into court and instructed them to investigate and report whether there be good cause for believing that Messrs. Gompers, Mitchell and Morrison were guilty of contempt of court. This action was in direct line with his manner and the language used when imposing the original sentence for contempt as well as that of his other actions in this case, and his action since. In the opinion of this committee, the whole proceeding has more of the characteristics of persecution than trial and it is very difficult indeed to understand the conduct of Judge Wright, except upon the theory that he is lacking in the temper and qualifications that should and usually do constitute the judge, and we cannot help but express our deep regret that a man so lacking in judicial temperament should ever have been elevated to the bench.

A motion was made and seconded that the report of the committee be adopted.

President GOMPERS: I am glad the Committee on President's report has had an opportunity to present this subject to the delegates at this time. About thirty minutes ago a newspaper man informed me that he had received information from his home office at Washington that Mr. Justice Wright was about to render his decision in the Supreme Court of the District of Columbia this morning upon the motion to dismiss the charges of contempt against my two colleagues, Mr. Mitchell, Mr. Morrison and myself.

Since I have obtained recognition from you, Mr. Chairman, to address the Convention upon the motion before the house I have been handed two sheets of paper which I have not yet had an opportunity to read; but such as it contains, and without any attempt to read it first I shall, in view of the fact that it has been handed to me in full view of the delegates to this Convention, read it.

President Gompers read the following:

Bulletin.

"Washington, Nov. 23.—Judge Daniel Thew Wright, voicing the opinion of the district supreme court, in general terms today overruled motions of Samuel Gompers, John Mitchell and Frank Morrison, officers of the American Federation of Labor, to dismiss contempt proceedings against them on the ground that the application of the statute of limitation, held that contempt of court is not a crime and can therefore not be subject to the statute of limitations.

"He gives the counsel representing the labor leaders three days in which to reach an agreement with the committee previously appointed as to a suitable person to be named commissioner to take testimony as to the alleged —

"There being no faith or merit in any part of the motion it must be overruled," said Justice Wright.

"Of the parts of the labor leaders, motion urging the dismissal of the contempt proceedings, he said that they 'be put aside, for they seem at best frivolous and insincere.'

Continuing the opinion says:

"Of the fallacy that alleged contemnners are contending with judges, contemnners cannot too soon unload their minds; for if charges of contempt are true the contest is against the supremacy of the law. The duty and concern of judges is only this: That for and in the name of the people the supremacy of the law should be maintained."

"Opinion read by Wright. Big crowd present."

In discussing the question President Gompers said in part:

The decision of the court is that the motions made by the defendants, Mitchell, Morrison and Gompers, have been dismissed and three days given for our attorneys and the attorneys of the prosecution to determine as to who shall be examiner. The examiner is simply one who has to be present when the testimony is taken. He has no power of any sort. If anything transpires he may report it to the court, but he cannot enforce any ruling, he has no ruling to make. In the report I had the honor to submit to this Convention I referred to our efforts to secure the trial of this case in open court before the judge, rather than have it referred to an examiner, if our motions to dismiss were overruled. During the taking of testimony in the original contempt proceedings a number of questions were put to me which I knew were entirely irrelevant, which were facetious and maliciously put and I at times turned to our counsel and in whispered conversation asked him if I ought to be compelled to answer the questions, and if I might not as well take a chance and refuse to answer and take the consequences. He said that he could not advise me not to answer. I had to answer the questions. Questions put later were of such an outrageous character that I simply on my own initiative declined to answer them. I was asked whether they were incriminating. I refused to answer that. The questions were certified to by the examiner and brought to the attention of the court. The court decided, after an argument of several hours, that I had to answer, no matter what the question was.

No principle for which we were contending was involved in that procedure, and I answered. The proceedings before the commissioner were resumed, and I answered. We were contending for a principle upon which we apprehended the Supreme Court of the United States would in the last analysis decide, the question of our right of self-ownership and the ownership of our patronage; the right to do collectively the things we had the lawful right to do as individuals. We could not get the Supreme Court to decide on that question, because they declared when our case reached there by reason of our having come to an agreement with the company that had theretofore been our antagonist it made the case a moot case and the court declined to decide upon it. Upon the resumption of taking testimony before the commissioner I had to answer the questions. The questions were irrelevant. The answers in reply were all taken in shorthand and written out. Objections may be made by the attorney for the defense. The objections are stated, but they are in print and the judge, after reading the question and then reading that answer, may upon the objection

as recorded rule out both the question and the answer; but what human being is so constituted that he is not in some way or other influenced by the things which he has read?

The motion to adopt the report of the committee was carried by unanimous vote.

The People—the Judiciary—Injunctions—Defense.

Under this caption President Gompers says in part:

"To our 1908 Denver Convention, I took occasion to report:

"It is quite evident that it is the purpose of labor's opponents to entangle us in constant litigation before the courts, involving not only our time and attention, but enormous expense for legal counsel, printing, and court fees. The expenditures of time and money have been enormously increased in recent times, since the further abuse of the injunction writ and the Hatters' decision of the Supreme Court, all of which have been taken advantage of by all union haters.

"The contempt proceedings against Messrs. Mitchell, Morrison, and myself have just closed. The Executive Council or I may again be cited for contempt of court because I have undertaken to report the status of the case to this convention; and no one can foretell to what limits the contempt proceedings, injunction cases, and other suits may extend. For one, I am free to say that I shall not recommend the levying of additional assessments or making appeals for voluntary contributions in legal defense of these cases. If it is the intention of those who are hostile to the interests of the toilers of our country to take advantage of the trend of court decisions for the usurpation of the toilers' rights by the injunctions, let them proceed as they will without our assuming to do the impossible—that is, to be represented by competent legal counsel. If the situation is to become so acute, let us personally as best we can, defend our rights before the courts, taking whatever consequences may ensue. For one, I can see no remedy for these outrageous proceedings, unless there shall be a quickening of the conscience of our judges or the relief which the congress of our country can and should afford."

The committee to which this subject was referred made a report, upon which ensued a prolonged discussion and which was finally amended and adopted by the convention, as follows (the committee quoted part of my report upon the subject, which has already been mentioned herein):

"Bearing this in mind your committee desires to state that whenever the courts issue any injunctions which undertake to regulate our personal relations either with our employer or those from whom we may or may not purchase commodities, such courts are trespassing upon our relations which are personal relations, and with which equity power has no concern; that these injunctions are destructive of our rights as citizens, as well as of popular government, and we therefore declare that we will exercise all the rights and privileges guaranteed us by the Constitution and the laws of our country, and insist that it is our duty to defend ourselves at all hazards, and we recommend that such be our action, taking whatever results may come.

"We further recommend that when cited to show cause why such injunctions should not be issued, we should make no defense which would entail any considerable cost, and we further recommend that when cited for contempt the proper policy is as outlined above. We further desire to warn our fellow unionists that testimony extorted under equity process may be partially used in a damage suit under the Sherman Anti-Trust law.

"However, your committee feel constrained to say that when blanket injunctions are applied for or issued by the courts against the members of unions for no other reason except that they are members of the unions, and these injunctions are applied for or issued solely for the purpose of intimidating the members, we believe that such legal advice and protection as may be necessary should be provided for them by the organizations in interest."

Since that declaration of our 1908 convention the situation has not materially changed, except that events have made it, perhaps, more acute.

The question has therefore arisen in my mind as to whether in the recent past we have pursued the most practical course in the legal defenses we have presented to the courts when unwarrantable injunctions have been issued and we have been cited to show cause why we should not be punished for alleged violation of the injunctions—for contempt of court. Labor's antagonists have sought to entangle us in all forms of litigation involving large expenditures of the hard-earned money of the workers; they have to a considerable extent made impossible much constructive uplift work of our men and of our movement. The conclusion reached in one case has not had its definite determination by which the courts of other or of equal jurisdiction have limited their course. The question of doubt which has

arisen in my mind as to the course we have pursued raises the
 884 further thought whether at some time we shall not appear in
 our own persons and in our own defense without the aid of
 attorneys; that is, whenever, after due study and consideration of
 the facts relative to an unwarrantable injunction in a labor dispute,
 it is decided by the union or unions interested that the members
 have good grounds for holding and maintaining that their funda-
 mental, constitutional, and inherent rights are invaded by the in-
 junction, and if arrest ensues, those workers who are taken before
 the courts shall decline to employ the services of counsel, but shall
 themselves assert their rights under the law and then abide by the
 consequences—if imprisonment follows, the victim in any case to
 accept his fate; the members of the union concerned to take care of
 his family or dependents, and the usual agents of publicity, espe-
 cially the labor press and the spokesmen for the unions, to appeal the
 case to public opinion. By such a course any usual terrors of jail
 imprisonment will be annulled. It is clearly no disgrace to have
 been convicted under court decrees which the masses of the people
 know are oppressive and ill-grounded, which form mere fiat law
 which has not been made through elected representatives in the
 course of legislation, and the general terrorism of which, by recent
 votings, the citizens of whole states have shown that they oppose.

The suggestion that hereafter we shall decline to employ the services of counsel when unwarrantable injunctions have been issued and we have been cited to show cause why we should not be punished for alleged violation of the injunction, was beyond question the correct line of policy under the conditions existing at the time the Denver Convention was held. Since that time the decision of the Supreme Court of the United States in the Gompers, Mitchell and Morrison case has materially changed our position in relation to injunction when issued.

For the first time in the history of the Supreme Court it has taken occasion to divide contempt into two elements, one remedial and the other criminal. As long as the practices of the courts caused them to use that form of punishment which the Supreme Court designates as criminal, that is imprisonment for contempt or a fine, going to the *the* court, it would have been good policy to have declined to employ the services of counsel and to have defended our rights personally before the courts, taking whatever consequences might ensue.

But with the suggestion made by the Supreme Court that punishment for contempt may be remedial in character, that is, the court may impose three-fold damages for the benefit of the person or corporation suing out the writ, it becomes clearly apparent that the funds of every labor organization in the country are at the mercy of the courts whenever an injunction is issued, and we might just as well spend these funds in defending them and our members as to allow the courts to take them in the form of damages.

We, therefore, recommend the continuance of the policy of defending our members wherever possible when they are cited to show cause why an injunction should not be issued or why they should not be punished for contempt.

A motion was made and seconded that the report of the Committee be adopted.

Delegate BARNES (J. M.): I move as an amendment to the last paragraph that the words "do not," be inserted before the word "recommend."

Vice-President Duncan declared the amendment not in order, as it was a negative motion, and the same result would be secured by voting down the report of the Committee.

Vice-President Mitchell discussed the question briefly and said in part:

"I am sick of having this matter brought up in Convention after Convention. Justice Wright acts as though he were conspiring with the defense to bring this case to the attention of the public every time a Convention of the American Federation of Labor is being held, not as though it were done for the purpose of embarrassing the defense, but for the purpose of helping them.

"I don't want the American Federation of Labor or any organization affiliated with it to spend any more money in defending me, and I am sure that is the way President Gompers and Secretary Morrison feel about it. And if there is no great principle involved in which the rights of the men of labor are interested, and vitally interested,

I think we might as well stop hiring lawyers and allow Justice Wright to have his way.

"I am free to confess I do not want to go to prison. I would give a great deal to remain free, but if there is no escape from the vindictiveness of this judge, except a term of imprisonment,

I wish we could get started to serve the term and have the matter over with. The very prolongation of this litigation is a greater loss to me than would come from serving nine months in jail.

"I do not want to make any declaration as to what my purposes would be in this matter without consultation with my associates so as to determine how far the principles of organized labor are involved in the case now pending; but if the interests of organized labor are not now at stake I would be perfectly satisfied to advise our attorneys to withdraw this case, let us go to trial in whatever way we can and accept the consequences whatever they may be. At any rate, whatever the policy of the American Federation of Labor is going to be in regard to any other man, no matter how humble he may be, then that policy must apply equally to the three defendants in this case. In other words, if all men are not to be defended, then we must not be defended.

"I said a year ago I was anxious to withdraw from the vice-presidency of the American Federation of Labor, that I had retained the vice-presidency with the thought perhaps that if I was compelled to serve a term in prison it might be more helpful to the labor movement if I served as vice-president of the American Federation of Labor than as a private citizen. I had hoped by the time this Convention arrived we would have served the sentences, or, better still, would have been cleared."

Witness is asked whether in view of the foregoing he says that from December 23, 1907, Messrs. Gompers and Mitchell and the A. F. of L. had abandoned the boycott and replies that so far as he has information or personally knows, he has knowledge, he has not aided or abetted a boycott of the Buck's Stove and Range Company since December 23, and neither Gompers, Mitchell, nor other members of the Executive Council have aided or abetted the boycott. If witness has used the words "American Federation of Labor," it was simply as the organization without members, the membership being composed in the various national and local unions, and in speaking of the American Federation of Labor, he meant the Executive Council, and any action that they might take which would be similar to the action taken by the convention. Witness has no information personally, other than what appears in the proceedings of the action of the local unions, the proceedings taken in the equity case. Since December 23rd, 1907, he knows of no act of Gompers, Mitchell, the members of the Executive Council, or himself that had for its purpose to aid or abet the boycott. Would take it that the fact that the Buck's Stove and Range Company was prosecuting or had any injunction against the officers of the A. F. of L., would not influence any member of organized labor to purchase Buck's stoves or ranges, in fact, it would prevent them from doing so.

(Page 1841.) The fact that the case was still in existence, and that the officers were struggling to secure remedial legislation and decision would, of course, keep in the minds of the members that there was a contest, but it was necessary for this case to be carried to the Supreme Court to get a final decision—a decision final so far as the Courts were concerned, and if the decision did not appear satisfactory to the labor people, if they felt that the law applied to them was not what it should be, they would exercise their rights as citizens and take such action to have an amendment or laws passed that would remedy their grievances.

There is read to the witness from page 118 of the proceedings of the Convention of 1910, from the Executive Council report submitted by the President, Vice-Presidents and Secretary of the A. F. of L., as follows:

"At Peace with the Buck's Stove and Range Company.

"At our June meeting, Vice President Valentine called attention to the fact that by reason of the demise of Mr. J. W. Van Cleave, the Buck's Stove and Range Company went into the hands of a new management and that an opportunity was afforded to successfully renew the efforts at the adjustment of the dispute with the Company where it had failed some years before under the old management. We authorized him to make such effort as he could; that we were desirous, as we always have been, of coming to an honorable adjustment of any difficulty which we might have with employers. Through his efforts a conference was held at Cincinnati, July 19, 1910, at which officers of the Stove Founders' National Defense Association, representing the Buck's Stove and Range Company, conferred with the following representatives of labor: Joseph P. Valentine and John P. Frey, representing the International Moulders' Union of North America; T. M. Daly and Charles R. Atherton, representing the Metal Polishers, Buffers, Platers and Brass Workers' International Union of North America; Frank Grimshaw and J. H. Keefer, representing the Stove Mounters' International Union; George Bechtold, representing the International Brotherhood of Foundry Employees, and Samuel Gompers, representing the American Federation of Labor. The conference lasted all day and until late in the night, and an agreement reached. The agreement was published in the September issue of the American Federationist. This agreement was carried out by two subsequent agreements, one in the matter of the labor conditions which were to prevail in the company's plant, and the other changing the original agreement by which the attorneys of the company should be withdrawn from the case pending before the United States Supreme Court. The new management of the company has declared that it has always been its policy to live in terms of good will and friendly relations with organized labor and that it proposes to continue to conduct its business on these lines in the future. We deemed it our duty to state to organized labor, its friends and sympathizers, that the industrial struggle between labor and that company has come to

an end by mutual honorable adjustment, and that the company, like all other employers fairly disposed toward organized labor, is entitled to the courtesy, consideration and patronage of all."

Witness is asked if after reading, whether he still says that there was no boycott on the part of the A. F. of L. and the affiliated organizations after the 23rd of December, and replies that so far as he was concerned there was no act of his after December 23rd to aid or abet a boycott of the company.

887 (Page 1844.) Was present on December 23, 1908, when

Mr. Justice Wright delivered his opinion and finding upon the former contempt proceedings, and listened thereto attentively.

Mr. Davenport reads from the February, 1909, Federationist, page 119, from Judge Wright's decision, as follows:

"Frank Morrison is and has been Secretary of the American Federation of Labor, stationed at its headquarters in Washington, and as such appeared and took part in the proceedings of the annual conventions of the American Federation of Labor. He was present at the annual convention of 1907, took part in and was acquainted with its proceedings and under its directions prepared, published and circulated the official report of its proceedings.

"He took part in the preparation, publication and distribution, having with full knowledge of its contents signed in his capacity as secretary, the circular letter of November 26, 1907, above quoted.

"With knowledge of its contents, he aided in the preparation, circulation and distribution, prior to December 23, 1907, of the same copies of the January, 1908 number of the American Federationist, that are hereinbefore specified against Gompers and with the same purpose and intent.

"He signed and took part in the preparation of and dispatched to each secretary of the 25,000 to 30,000 unions, along with the Urgent Appeal, the circular letter hereinbefore specified against Gompers, with full knowledge of its contents and with the same purpose and intent.

"He took part in the preparation, publication, circulation and distribution of the April, 1908 number of the American Federationist, with full knowledge of its contents as hereinbefore specified against Gompers, and with the same purpose and intent.

"With knowledge and approval of the other writings and speakings hereinbefore specified against Gompers, he took part in the circulation and distribution in large numbers of each and every issue of the Federationist containing them, as hereinbefore specified against Gompers, and with the same purpose and intent."

887½ Witness is asked whether he heard that read, and says that

he did, but did not carry the substance very thoroughly in mind; got a general idea of what was contained in the decision, in the finding and sentence. After he had listened to that witness remembers that the Judge asked "Have any of you — to say why judgment should not be pronounced?"

There is read to the witness from page 151 of the February, 1909, Federationist, as follows:

"Mr. MORRISON: Your Honor, I would simply say, as has been

stated by Mr. Mitchell, that I endorse what has been said by President Gompers.

"I am conscious of committing no wrong or having in any way violated the law; and it is my belief that in every act that I have committed I have exercised my rights under the constitution and laws of this land, of which I am a citizen."

Witness is asked why if there was any error in fact in the statement read to him at that time, and no read to him, he did not deny it, and says that he did not attempt to carry in mind the statements made by the Judge in regard to the respondents. Was more interested in the determination as to what decision he would reach. In addition, it never occurred to him if he heard the statement made by the Judge, that he should enter into a discussion with him with regard to it. Supposed that was a matter of form which was gone through, and that was not the time and place to take up the matter for discussion.

Mr. Davenport offers what Mr. Gompers said as set forth on pages 129 and 151 of the February, 1909, *Federationist*, as follows:

888

Why Sentence Should Not Be Passed.

Replies of Mr. Gompers, Mr. Mitchell, and Mr. Morrison to Justice Wright Before Sentence Was Imposed in Contempt Proceedings.

The Court: Have any of you anything to say why judgment should not be pronounced?

Mr. GOMPERS: Yes, sir. Your honor, I am not conscious at any time during my life of having violated any law of the country or of the District in which I live. I would not consciously violate a law now or at any time during my whole life. It is not possible that under the circumstances in which I am before your honor this morning, and after listening to the opinion you have rendered, to either calmly or appropriately express that which I have in mind to say; but, sir, I may be permitted to say this, that the freedom of speech and the freedom of the press has not been granted to the people in order that they may say the things which please, and which are based upon accepted thought, but the right to say the things which displease, the right to say the things which may convey the new and yet unexpected thoughts, the right to say things, even though they do a wrong, for one can not be guilty of giving utterance to any expression which may do a wrong if he is by an injunction enjoined from so saying. It then will devolve upon a judge upon the bench to determine in advance a man's right to express his opinion in speech and in print.

There is much that I would like to say. I feel that I can not say it now, but if your honor will permit me, I will say this.

Your honor has, in the course of your opinion, accepted the testimony adduced by the Buck's Stove and Range Company, accepted it as evidence, and laid much stress upon the fact that the evidence is not denied; and upon the failure to deny, I can readily under-

stand it may be accepted as having been admitted. But your honor will see the situation. Supposing some citizen were brought before a court charged with a crime, aye, even murder, and if advised and believing that the judge sitting upon the bench would undertake to proceed with the trial of the defendant without submitting such a case to a jury, if the defendant were advised that the judge, in the exercise of that function, violated the fundamental constitutionally guaranteed rights of the citizen, hence that it was not requisite on his part to enter any defense, and that in the last analysis the higher courts would reverse the decision of the judge upon that ground, and the citizen would therefore enter neither denial nor offer evidence in rebuttal to that presented by the prosecution.

It is true that the judge might hold that there being no denial of the testimony presented against him, therefore he would hold the charge as proved, yet as a matter of fact it may prove nothing of the kind, even though it may be before the court.

I may say, your honor, that this is a struggle of the working people of our country, a struggle for rights. The labor movement does not undertake to presume to be a higher tribunal than the courts or the other branches of the government of our country, and the language quoted by counsel for the Buck's Stove and Range Company, which I am very glad to have the opportunity of explaining, the language accepted by your honor in your opinion in regard to the A. F. of L. convention being the highest tribunal in the realms of labor was not, either in my mind, or in the mind of any man that heard that report read, to apply to anything in which the rights of others outside of the labor movement were concerned. It was that in the A. F. of L. convention some question as to jurisdiction, as to internal strife, and disputes, between these organizations, that in so far as these contests were concerned the decisions reached by the convention of the A. F. of L. should be received by all concerned as determining their contentions.

Yes, sir, it is a great struggle, it is a struggle of ages, a struggle of the men of labor to throw off some of the burdens which have been heaped upon them, to abolish some of the wrongs which they have too long borne and to secure some of the rights too long denied.

If men must suffer because they dare speak for the masses of our country, if men must suffer because they have raised their voices to meet the bitter antagonism of sordid greed, which would even grind the children into the dust to coin dollars, and meeting with the same bitter antagonism that we do in every effort we make before the courts, before the legislatures of our states, or before the Congress of our country, if men must urge this gradual rational development then they must bear the consequences.

That which your honor has quoted and criticised and denounced in us, in the exercise of our duties to our fellows in our own country is now the statute law of Great Britain, passed by the parliament of that country less than two years ago. If in monarchical England these rights can be accorded to the working people, these subjects of the monarch, they ought not be denied to the, theoretically at least, free citizens of a republic.

In this struggle men have suffered. Better men have suffered than I. It is true that I do not believe that there is a man alive who would chafe more under restraint of his liberty than I would, but if I can not discuss grave problems, great questions in which the people of our country are interested, if a speech made by me on the public rostrum during a political campaign after the close of the taking of the testimony in this case, if the speeches in furtherance of great principle, of a great right are to be held against me, I shall not only have to but I shall be willing to bear the consequences.

I say this to you, your honor, I would not have you to believe me to be a man of defiant character, in disposition, in conduct. Those who know me, and know me best, know that that is not my makeup; but in the pursuit of honest convictions, conscious of having violated no law, and in furtherance of the common interests of my fellowmen I shall not only have to but be willing to submit to whatever sentence your honor may impose.

MR. MITCHELL: If your honor please, nothing that has been said by Mr. Gompers or may be said by Mr. Morrison and myself will have at all to do with the conclusion that you have reached or are about to reach. I wish you to know that I thoroughly and unreservedly endorse what Mr. Gompers has said, and I should like to adopt his expressions as my own.

MR. MORRISON: Your honor, I would simply say, as has been stated by Mr. Mitchell that I endorse what has been said by President Gompers.

I am conscious of committing no wrong or having in any way violated the law; and it is my belief that in every act that I have committed I have exercised my rights under the Constitution and laws of this land, of which I am a citizen.

889 (Page 1852.) Witness recollects that his Honor used the words that he regretted that he heard no word of explanation. Does not remember what the rest of it was. Just remembers the sentence that he expressed regret. The balance of it he does not recollect now.

The February, 1909, Federationists were distributed by the witness. Witness got it printed. The editorial on page 132, headed "The decision reviewed by Samuel Gompers, John Mitchell and Frank Morrison" was written by witness in collaboration with Gompers and Mitchell, and published by them as an expression of their views on the subject. Witness joined with them in signing it. Concurred in the statements contained in the editorial with reference to his own acts, what he had done and what he was charged with, and as to his guilt in regard to them. It appeared to him to — a statement of the case as far as he understood it.

The following was then read to the witness by Mr. Davenport, from the Report or Charges of the Committee in the present proceeding:

"As in the case of Samuel Gompers, the said Frank Morrison alleged, and it may be, although gravely in error, he then believed that the injunction was not binding upon him because of what he claimed to be his constitutional right of free speech and free press;

and it may be, now that this contention upon his part, always indefensible, has been determined by the Supreme Court of the United States to be unfounded, he may be prepared to make such due acknowledgment, apology and assurance of future submission to the Court as may meet the necessary purpose of vindicating its authority, and that of the law."

The witness says that he believed citizens should obey the law of the land; that they should also protect their constitutional rights; that he was not guilty of the violation of the injunction insofar as aiding or abetting a boycott on the Company was concerned. Not being guilty of the act with which he was charged, he does not see how he could apologize for an act he has not done.

Mr. Davenport read to the witness editorial in the February, 1909, Federationist, headed "Justice Wright's Denial of Free Speech and Free Press." (See page —). Witness says he knew that editorial was in the Federationist, and it was distributed in the usual way. Witness's attention is called to the report in the March, 1909, Federationist of the proceedings of the Executive Council of the A. F. of L., held at Washington, D. C., January 11 to 16, 1909, particularly to that portion on page 270, under the heading "Judge Wright's Decision in the Contempt Proceedings," reading as follows:

On Monday, December 21st, our Counsel advised me that he had been informed that Justice Wright of the Supreme Court of the District of Columbia would render his decision in the contempt proceedings against Mr. Mitchell, Mr. Morrison and me, and that we were directed to be in court at ten o'clock on Wednesday morning, December 23rd. I advised Secretary Morrison and called up Mr. Mitchell over long distance telephone in New York. He urged that I make an effort to secure some change in the date, as he desired to be with his family for Christmas. I had already requested our attorneys to make the effort, but the judge declined to change the time. Mr. Mitchell sent me a telegram again urging me to make another effort so that the date for the rendering of the decision might be advanced to Tuesday, December 22nd, or deferred a few days after Christmas. I replied by telegraph stating that Judge Wright was obdurate and from what I knew of his frame of mind, his refusal to change the date of the argument in the contempt proceedings for a day so that Judge Parker, who had an engagement to argue a case before the New York Court of appeals, could come to Washington and make the leading argument, the Counsel for the Buck's Stove and Range Company having agreed to the request for a change in date, I declined to ask any consideration of the hands
891 of Judge Wright.

"Mr. Mitchell telegraphed our attorneys to make another effort, stating that last year he was in the hospital; that that was the first time he had ever been away from his family on Christmas; that he had made all arrangements to go and was very anxious to be with his family this Christmas; that he would appreciate it greatly if the judge could change the time to either a day before or a few days after the time set by him. Though convinced that the judge

would not change the time set by him, our attorneys wrote a letter to Judge Wright, enclosing the original telegram of Mr. Mitchell. The judge sent a peremptory and negative answer.

"Your attention is called to the correspondence of Judge Parker and Messrs. Ralston and Siddons and others relative to part of this matter, and as published in the January issue of the American Federationist.

"On Wednesday, December 23rd, Judge Wright sentenced Frank Morrison, John Mitchell and me to terms of imprisonment of six, nine and twelve months respectively. Appeal has been taken: bond has been filed for \$3,000, \$1,000 and \$5,000 respectively.

"In connection with the decision and sentence your attention is directed to the answers which Mr. Mitchell, Mr. Morrison and I are preparing and the editorials which I may write, as well as to incidents in connection with the decision and sentence and which are not generally known. You may find them interesting."

Witness says he has no recollection whether that editorial was brought to the attention of the Executive Council at that time or not. Cannot say the exact time when the editorial was written. They were written up until the last moment, so they *can* get the paper off or get it printed by the 24th. That is an editorial by President Gompers as to his idea of the scene in court as he saw it.

(Page 1864.) That was President Gompers' description of the scene in court as he saw it, published by him, and witness understands that they have a right to criticise a court's decision. Does not feel competent to answer as to what effect it would have on the members of the organization. Does not believe that the criticism of one judge has any effect in the minds of members of organized labor, or the public as to the dignity of any particular court.

(Page 1867.) In discussing with his counsel as to the Urgent Appeal, he went away with the idea that respondents had a right to send out an Urgent Appeal to raise funds; that they had a right to issue an appeal to their organizations, with such explanation as was necessary to inform them as to what they wanted it for and that they desired it. Asked counsel's advice in regard to it, and stated that they wanted to send out an urgent appeal, and were going to send it out, and the impression that he carried away with him was that they had a right to issue that appeal. Does not believe it was discussed whether it violated the injunction. Did not ask that question of his counsel because it had not occurred to him that it was a violation of the injunction. Spoke to counsel at different times on the subject of the Urgent Appeal.

892

FRIDAY, February 16th.

Cross-examination of respondent FRANK MORRISON resumed:

(Page 1869.) Does not recollect what action was taken at the 1906 Convention in regard to placing the Company on the unfair list. Does not recollect whether any action was taken at that Convention.

The following is read to the witness from the proceedings of the Minneapolis Convention of 1906, page 114:

"Whereas, the Buck's Stove & Range Company of St. Louis, Missouri, which — owned and controlled by J. W. Van Cleave, president of the Manufacturers' Association, has persistently discriminated against the members of the Foundry Employés Union to the extent of discharging every man as soon as it became known that he was a member of said union; therefore be it

"Resolved, That the product of the above-named factory be placed on the We-don't-patronize list of the American Federation of Labor.

"Referred to the Committee on Boycotts."

"Resolution No. 45—By Delegate George Bechtold, of the International Brotherhood of Foundry Employés.

"Whereas, the Buck's Stove & Range Company of St. Louis, Missouri, which is owned and controlled by J. W. Van Cleave, president of the Manufacturers' Association, has persistently discriminated against the members of the foundry employés union to the extent of discharging every man as soon as it became known that he was a member of said union; therefore, be it

"Resolved, that the product of the above-named factory be placed on the "We-don't-patronize list of the American Federation of Labor.

"Delegate Bechtold moved the adoption of the minority report.

"President Gompers stated that the minority report was in conflict with the constitution, and therefore out of order.

"It was moved by Delegate Morris that the majority report of the Committee be concurred in. (Seconded).

"Delegate McCullen moved as an amendment to the report of the Committee that the report be approved by the Convention, and that the executive council be instructed to take action at the earliest possible moment. (Seconded).

894 "The question was discussed by delegates Owen, Denny, McCullen and Conway.

"The amendment offered by Delegates McCullen was adopted, and the report of the committee, as amended, was adopted."

Witness is asked if this was not the action taken by that Convention, and replies that the record shows that a majority of the Committee recommended reference to the Executive Council in accordance with Article 9, Section 4 of the Constitution. The minority action was not adopted. The action indicated was taken. The majority report referred it to the Executive Council, and was adopted with the amendment that the report be approved by the Convention, and the Executive Council instructed to take action at the earliest possible moment in accordance with the provisions of Section 4. The action was taken at that Convention. The following was read from page 242 of the proceedings of said Convention.

"Delegate Flynn, for the Committee on Boycotts, reported as follows:

"The committee recommended that resolution No. 141, be referred to the executive council as per article 9, section 4, and recommend that it be given immediate attention."

"Delegate Flynn then read resolution No. 141, and:

"Delegate Flynn, for the committee, continued the report, as follows:

"At the twenty-fifth annual convention of the American Federation of Labor, held in Pittsburg, attention was called to the large number of firms on the unfair list, and the necessity of reducing the same so that we could make our declarations of unfairness effective. This committee finds that not many changes have occurred during the past year and concede that some action must be taken in order to secure the co-operation of the labor press. We can't expect the labor press to give the space that it would require to publish the names of all these firms, and without publicity the intent of the boycott is defeated.

"We believe that some measure must be adopted to find out if the national, international or local unions who are responsible for the boycott are doing their duty to bring about the desired results,

895 Therefore we recommend that the organizations that have firms on the "We-don't-patronize" list of the American Federation of Labor, beginning January 1, 1907, report every three months to the executive council of the American Federation of Labor what efforts they are making to render the boycott effective. Failure to report for six months shall be sufficient cause to remove such boycotts as are not reported on from the "We-don't-patronize" list of the American Federation of Labor. * * *

"A motion was made and seconded that the report of the Committee be concurred in.

"President GOMPERS: The facts upon which the application is based must be set forth to substantiate the complaint in order to allow the executive council to ascertain if a cause for complaint really exists.

"The motion to concur in the report of the Committee was carried."

Witness is asked whether that action was taken at that Convention of 1906, and says yes. The following is read from page 237 of the report of the proceedings of the Convention of 1907, held at Norfolk, Virginia, being a part of the report of the Committee on Boycotts:

"The Committee presented the following:

"'We Don't Patronize List.'

"We desire to call your attention to the action of the Minneapolis, Minnesota, convention on this important matter, and particularly to the recommendations thereon as concurred in by that convention. Conditions have not been materially changed since that time, and we therefore recommend that the executive council be instructed to remove from the We-don't-patronize list the names of firms in all instances where the executive council has knowledge that the national or international union responsible for the boycott are not aggressively pushing the same. We feel that the boycott should only be resorted to after all efforts at adjustment have failed, but when instituted by national, international, state or central bodies, it should be made so effective that speedy agreement between the international union and firms will follow."

The following was read from page 293:

896

"Delegate McGEE: That completes the report of the Committee, which is signed by the Committee.

"On motion the report of the Committee of the Whole, as amended, was adopted."

Witness is asked if that action was taken at the Norfolk Convention in 1907, and says that he did not see any specific action on that part on the We-don't Patronize list, but takes it that probably the adopting of the report of the Committee of the Whole, as amended, would include that. Such action was taken at the November 1907 Convention at Norfolk, and was contained in the proceedings as disseminated and distributed.

Witness's attention is called to the following from the proceedings of 1905, at page 193:

"Resolution No. 95—by Delegate R. Schirra, A. A. Myrup, E. Scheerer, Bakery — Confectionery Workers' International Union of America:

"Whereas, the boycott against the McKinney Bread Company of St. Louis, Missouri, has been endorsed and re-endorsed by the annual convention of the A. F. of L.; and

"Whereas, the McKinney Bread Company still refuses to make a settlement with the Bakery & Confectionery Workers' International Union of America; therefore, be it

"Resolved, That the twenty-fifth annual convention of the A. F. of L. reaffirm the boycott against the McKinney Bread Company of St. Louis, Missouri, and instruct the incoming executive council to do all in their power to force the McKinney Bread Company of St. Louis, Missouri, to make a settlement with the Bakery — Confectionery Workers' International Union of America.

"The Committee recommended that the resolution be concurred in.

"It was moved and seconded that the report of the Committee be adopted. (Carried)",

and is asked whether that action was taken at that time by the convention, and says that that action was taken at that convention, and is asked, referring to page 199, whether the following action was not taken.

897

"Resolution No. 141—by Delegate A. B. Grout, Metal Polishers, Buffers, Platers, Brass Moulders, Brass and Silver Workers' Union of North America:

"Whereas, the members of the Metal Polishers, Buffers, Platers, Brass Moulders, Brass and Silver Workers' Union of North America who were employed by the Wehrle Stove Company of Newark, Ohio, were forced to cease work on June 2, 1905, on account of the unjust and arbitrary attitude assumed by the firm; and

"Whereas the entire output of said shop is disposed of through the mail order house of Sears, Roebuck & Company of Chicago, and all attempts of our international organization, Central Trades council of Newark, Ohio, the Chicago Federation of Labor, a State board of arbitration, a committee of citizens and the executive council of the

American Federation of Labor have attempted to adjust this trouble without success; therefore, be it

"Resolved, That the American Federation of Labor, in its twenty-fifth annual convention assembled, endorse the action of the Metal Polishers, Buffers, Platers, Brass Molders, Brass & Silver Workers' Union of North America in placing them on the 'We don't patronize' list and place the Wehrle Stove Company of Newark, O., and Sears, Roebuck & Co. of Chicago, Ill., on the unfair list of the American Federation of Labor, and that the usual course in advertising the fact be followed.

"The Committee made the following recommendation:

"The committee reports favorably on this resolution. A thorough investigation of the allegations set forth in the resolution develops a state of affairs that is a reminder of the Peabody régime in Colorado. It is almost unbelievable that the outrages committed by this corporation occurred in the supposedly highly civilized State of Ohio. Agreements were made by the representatives of the company, only to be broken. The shop conditions were made so obnoxious that the employes struck in sheer desperation. The works were manned by the toughest Pinkerton thugs procurable, and were turned into a fortified stockade. Citizens of Ohio were arrested by these alien thugs and confined in this stockade and it required habeas corpus proceedings through the courts of Ohio to secure their release. Two men were murdered and a number wounded by these professional strike breakers, but up to date none of them have been apprehended.

"The firm of Sears, Roebuck & Company, of Chicago, Ill., who handle the entire product of the firm, were consulted and requested to use their influence to arbitrate or settle the difficulty. Therefore, to make the declaration of unfairness effective, they must be included.

898 "Treasurer LENNON: I move that the entire matter be referred to the Executive Council to take the usual course. (Seconded.)

"Delegate Grout spoke at some length in favor of the adoption of the resolution, and claimed that the usual course had been taken in regard to it. He asked for immediate action. The matter was further discussed by Delegate Zaring, Delegate Barns, Vice President Duncan, Delegate Miller and Delegate Franey.

"Vice President Kidd in the chair.

"It was moved by Delegate Grout, as an amendment, that if the Executive Council is unable to effect a settlement within two weeks that the two firms mentioned in the resolution be placed upon the unfair list of the American Federation of Labor.

"Delegate Grout, after some discussion, changed the amendment to read 'thirty days' instead of 'two weeks.'

"The amendment was then seconded and carried, and the original motion as amended was adopted."

Witness says the action taken was referring it to the Executive Council to make an effort. Witness says that the examiner has only read part of it. The action read was taken, and the action was that

it should be referred to the Executive Council to make an attempt to bring about an adjustment in accordance with the constitutional provision, and then if a settlement and adjustment was not reached within thirty days, the Executive Council should take such action as they desired, and it was to be published on the We-don't Patronize list. So much as was read is contained in the proceedings, and what there is besides can be found in the original report when copied.

Witness's attention is directed to page 260 of the proceedings at Pittsburg in 1905.

"Resolution No. 168—by Delegate Hugh Prayne:

"Whereas, The Philadelphia Inquirer, by its persistent hostility toward the unions of the printing trades, has forfeited all right to the good will and patronage of organized labor; and

"Whereas, Because of such hostility, the Executive Council has, on application of international unions of the printing trades, 899 placed the name of that paper on the We Don't Patronize list of the American Federation of Labor, therefore, be it

"Resolved, That the Twenty-fifth Annual Convention of the American Federation of Labor, denounce the Philadelphia Inquirer as unfair to organized labor, and call upon all trade unionists and their friends to refrain from patronizing it in any manner.

"The resolution was concurred in by the Committee on Boycotts.

"On motion, the report of the committee was adopted."

Witness is asked if that action was taken, and says it was, and that the action was the concurring in the action of the Executive Council prior to that in publishing or approving the International organization that brought in the complaint, and what was read to him was a correct extract from the report of the proceedings before the witness, and was taken by the Convention at that time.

Witness's attention is called to page 198 of the proceedings of the same convention under the heading Resolution No. 96, as follows:

"Whereas, The Boycott placed on the products manufactured by the Cracker Trust, known as the National Biscuit Company, with main office at Chicago, Ill., and having branches throughout the country, and

"Whereas, It is the chief custom of this concern to hire non-union and child labor, trying to disrupt the organization of the Bakery and Confectionary Workers' International Union by discriminating against the members; therefore, be it

"Resolved, That the Twenty-fifth Annual Convention of the A. F. of L. reaffirm the boycott on this concern, and through its president request all its affiliated organizations to instruct its members not to buy any product bearing the stamp of the National Biscuit Company.

"The committee recommended that the resolution be concurred in.

"On motion, the report of the committee was adopted."

900 Witness is asked if that action was taken and says that resolution was adopted, that is, the report of the Committee was adopted.

Witness is asked whether the following action was taken:

"Resolution No. 90, by Delegate Michael J. Reidy, Commercial Telegraphers' Union of America:

"Whereas, The Western Union Telegraph Company, a corporation organized under the laws of New York State, has been from its inception unfriendly to organized labor; and

"Whereas, Under the present administration of the Western Union Telegraph Company on every system in the United States of America and in the Dominion of Canada controlled by said Western Union Telegraph company telegraphers have been discharged without hearing or notice, simply because of their membership in the Commercial Telegraphers' Union of America, a labor union affiliated with the American Federation of Labor; therefore, be it

"Resolved, That the American Federation of Labor in convention assembled confirms its action of two years ago in placing the Western Union Telegraph Company on the unfair list.

"The committee made the following recommendation:

"We recommend that favorable action be taken upon this resolution. In connection with this resolution the committee desires to call the attention of the delegates to the necessity of impressing it upon the membership of the organizations they represent. There are thousands of telegrams sent by members of organized labor who are not in official positions, and who are not aware of the fact that this cruel exploiter of all its employes, outside of the higher officials, is on the 'We don't patronize' list of the American Federation of Labor.

On motion, the report of the committee was adopted."

Witness says that action was taken. Witness's attention is called to the proceedings of the Convention of 1906, at page 14, being part of the report of President Gompers, reading as follows:

901 "The general and public discussion of the needs and the demands of labor is in the several localities pressed home upon the people in their respective vicinities by our local labor movement, the central bodies and State federations. Our international trade unions and the American Federation of Labor are dependent upon local central bodies to carry out the program or policy decreed by the general labor movement. The financial support which central bodies contribute is necessarily meagre, for by their very nature and makeup a large revenue cannot be expected from them; but the practical assistance they can and generally do render the labor movement in executing the plans devised for the protection and promotion of the interests and rights of the toiling masses is incalculable. They are not only the local municipal councils of industry dealing with sociological problems, but they are also the concrete power to enforce and execute within the jurisdiction of their existence the judgment of the highest court in the realms of labor of America, the American Federation of Labor."

Witness is asked if that statement does not appear in the report and says yes. Witness's attention is called to page 38 of the proceedings of the Convention — 1906, under the heading "Organizers' Splendid Work", reading as follows:

"It is but scant recognition of our more than twelve hundred

volunteer organizers to say that without their aid, much of the success attending our movement would be lost. These men, without reward or hope of reward, devote their evenings and days, which others devote to rest or recreation, to the great cause of promoting the welfare of the toiling masses.

"And the special or salaried organizers perform their arduous duties zealously, giving general satisfaction, bringing to them the consciousness of work well done.

"Though it may be true that here and there a labor man may go wrong, I assert that, taking man for man, among the representative labor men of our country, they will be found as earnest, honest, faithful and unselfish as can be found in the professions or in any other walk in life.

"It is strange that our opponent would judge every other association of men by the best that they produce, while holding up to contumely the worst who may incidentally flit across the path of labor, and holding these up as typical of the best that our great movement produces.

902 "A constant and persistent application of the best that is in us to help our fellows, to instill into the hearts and minds of the toilers the necessity and the righteousness of helping to bear our brothers' burdens, will overcome ignorance and prejudice and will accord to our men the honor and encomium of the great uplifting work of humanity, well done."

Witness is asked if the foregoing does not appear in that report, and says yes.

Witness's attention is called to the following on the next page, under the heading "Labor Press":

"I wish I could state more strongly and emphatically the appreciation we all feel for the great work of the labor press of America, the great service it renders to the cause of labor and humanity. Often struggling under most adverse and disadvantageous conditions, the men conducting the labor press of America perform a heroic and self-sacrificing service. They deserve and should receive, from the toiling masses of our country, more generous support, not only financially, but morally."

and is asked if that does not appear, and says yes.

Witness's attention is called to the report of the proceedings of 1905, pages 36 and 37, under the heading "Organizers", and asked if the following does not appear.

"I esteem it an honor and a privilege to again bear testimony to the splendid service rendered to the cause of labor, the cause of humanity, by the organizers of the American Federation of Labor. In the course of years I have issued not less than ten thousand commissions to organizers for the American trade union movement. In all that time I am within the bounds of the statement of fact when I say that not a score of commissions have been revoked because of wrong doing.

"We have now 1,800 volunteer organizers, and 28 salaried organizers, directly commissioned by the American Federation of Labor. The tasks and duties of both are delicate, important, and often one-

rous. To attack the wrong, to espouse the cause of the weak, to defend and advocate the right under all and every circumstance which may arise, to be tactful, capable, and honest, are no mean attributes and qualifications for any one. They are necessary for a faithful

903 performance of the duty devolving upon the men active in the labor movement, and these must be possessed to a marked degree by the commissioned organizers of our movement. I feel it incumbent upon me to pay this merest simple tribute to the faithfulness of a host of men who are unselfishly and heroically performing so marked a duty in the interests of their fellows and for the furtherance of their material and social welfare.

"The Labor Press.

"The labor press gives constant evidence of its improving service to the cause of labor's interests, and a clearer perception of the attitude and position it occupies to the trade union movement. There is perceptible improvement and efficiency as time goes on. There are published now 185 official journals issued monthly or oftener by American International unions, and 179 weekly labor papers, all devoted to the defense and advocacy of labor's interest, nearly all of which are stoutly espousing the trade union movement and the American Federation of Labor. Though better support is now given to the labor press than heretofore, it is still of an unsatisfactory character. The service which the labor press renders our fellow-workers is incalculable in dollars and cents. In saying the right word at the right time to place labor's side before the world upon any given controversy or point at issue, many advantages are gained as well as the best possible showing made for the cause and the movement which, despite their nobility and grandeur, have too few friends and advocates. We can not too strongly urge our fellow workers and friends to give the labor press loyal and tangible support.

"American Federationist—Its Policy.

"With the December issue of the American Federationist the twelfth annual volume of its issuance will have been completed. As its editor, it has always been my endeavor to make its appearance and contents a source of gratification to our entire membership. In no year of its previous existence, I firmly believe, have we had more cause for gratification, because of these, than in the now closing year.

"The contributed articles, the correspondence, the organizers' and officers' reports, are continually developing into a higher order and a better character. When it is borne in mind that nearly all the contributed articles, whether of symposiums, correspondence, or otherwise, are given without compensation or honorarium, the beneficent influence the American Federationist wields, and the confidence and respect entertained for it, must at once be realized.

904 "In the whole field of economic literature the American Federationist is conceded to occupy the highest plane. Students and thinkers the world over consult it, refer to it, and quote

it as the authoritative expression of the American trade union movement, its struggles, its methods, its work, its hopes, and its aspirations.

"A few months ago, through no fault of mine, it was impossible to obtain the figures upon which the chart giving the state of employment and unemployment is based, and it was omitted in one issue. Within a few days thereafter inquiries were received from numbers of people, as well as from one of the great institutions of the country, which reviews and predicts industrial conditions, solicitously asking the cause of the omission, and desiring to know whether the actual facts and figures could be communicated in another way. This will indicate that what may be sometimes regarded as an almost insignificant feature in the American Federationist is by competent authority looked upon as most important.

"The publication of the monthly financial statement, giving in detail the source from which every penny is received, and the purpose for which every penny is expended, while giving the opportunity to carping critics to misstate facts, yet it instils confidence among our fellow workers and commands the respect of friends and fair opponents as to the honesty of our purpose and the administration of our affairs.

"Educationally, the American Federationist has been of vast value. The editorials and contributed matter are generally republished by the labor press and, to a considerable extent, by the general press here and elsewhere. It is on file and in the archives in nearly every library, university, and college of America.

"To record and review the real struggles of labor, particularly the achievements of organized labor and what it has accomplished in the interests of the working people and of all the people; to keep in touch with the real feelings and thoughts of the wage-earners; to reflect, defend, and advocate their hopes and their aspirations, I have endeavored to give the best thought of which I am capable. Nor have I failed to prick the baubles and bubbles or facts and fancies of spectacular theorists who, under the pretence of friendship, undertake to do our movement its greatest injury. And as for our open antagonists of the capitalist class and their spokesman, I have allowed no opportunity to pass by to show how utterly out of harmony are they with the progress and success of economic, civilized life."

965 Witness thinks that that appears in his report, but thinks there must have been a mistake when they say they are published in the 185 official journals issued monthly by the American International Unions and 179 weekly labor papers. Thinks there are not 185 international unions. Thinks the number is a misprint. Witness says that in 1885 under Section 1, article 7, the duties of the Secretary were as follows: the same rule prevailing in 1908:

"The duties of the secretaries shall be to take charge of all books, papers and effects of the general office; to conduct the correspondence pertaining to his office; to furnish the elective officers with the necessary stationery; to convene and act as secretary of the annual convention, and to furnish to the Committee on Credentials at the convention a statement of the financial standing of each affiliated

body; to forward, on March 1st and September 1st of each year, to the secretaries of all affiliated organizations, a list of the names and addresses to secretaries and organizers."

The labor journals and publications referred to under the head of "Labor Press" come in under the head of Federationist, and are exchanged with it. Supposes that President Gompers, as editor and publisher, would be entitled to exchanges. Had not thought of any clash of authority with him. Has no recollection of any communication with Mr. Gompers from the time he left the office on December 31st, until he returned about January 1st, or a little later. Has no recollection of any letters. Has no recollection of having any communication in regard to the Stove Company, or any other matter. Does not know about that. Has received telegrams from Mr. Gompers on one or two occasions when he was in Canada. Whether he did that time, he does not know. They might be preserved if he had them. Has no recollection now of any. Did

906 not have any telephonic communication, because distance was too great. Has no recollection with regard to the abandonment of the boycott other than that the bond had been filed, and the injunction was in effect. Took it for granted that it was almost as soon as he came back to the office, which was when he received the information. It was right after he came back, but just how soon, he does not know. Impression is that Gompers furnished him with the information, but it is possible he was furnished it by some of the employes. The information was that the injunction was in effect. Sometime after he returned, in talking over the question of the name on the We-don't-Patronize List, he advised Mr. Gompers that it would be well to take the name off. Don't know that he made any reply at that time. The name was taken off. The only information he had as to Mr. Gompers' efforts to comply with the injunction was in the matter of instructions to employes that nothing should be sent out in violation of the notice. If they had any doubt, it should be referred to him. Don't know that he had any information that John Mitchell had abandoned the boycott. Does not know that he had any communication with Mr. Mitchell until he and his colleagues sent the telegram to him January 23, 1908, wishing him well. He has no recollection. In a general way witness had the information that Mitchell was very seriously ill, even to death. Does not recollect having any statement from

907 Mitchell in regard to the boycott other than the fact that in as much as the name has been stricken off the We-don't Patronize List, the officers of the Federation ceased to have anything further to do with carrying on a boycott, and on his recollection, belief and knowledge, he knows of nothing Mitchell had done in furtherance or to aid or abet a boycott on the Company. Never learned that Mitchell was boycotting the Buck's Stove and Range Company, other than as an officer of the Federation, that they had been placed on the We don't Patronize list, and in regard to Resolution 73, of the United Mine Workers, the first knowledge he had of it was when it was brought up in the former contempt proceedings, or the original suit.

(Page 1900.) Witness understood that he made the statement

that he was not conscious that the resolution was introduced or adopted, and wants to say that he believed his statement. Thinks that the United Mine Workers' Journal was received at the Headquarters of the A. F. of L. Cannot say as to the January 25 and January 30, 1908 issued. Very rarely, if ever, read the journal. Don't know that it was received irregularly. Would be inclined to think that it came pretty regularly. Some of them, he does not know how far back, are in their archives. Knows the labor papers are disposed of about every year. Don't know whether that file was there back that far or not. Does not preserve them, they go to the Federationist Department, and are kept there, he thinks, for a year. They do not bind them, and it is just possible that they have been destroyed. Not only these, but nearly all the different journals of the International Unions, because it would take considerable extra room to keep the files. Does not know whether that file is there now or not.

908 (Page 1902.) Does not know that it was a surprise to the witness to learn that the boycott had been abandoned, because the injunction was issued and the bond was filed. Recollection is that Mr. Gompers took the name off the We Don't Patronize list. It had cost considerable money to send out the circular of November 26th, if 27,000 were sent out. The financial part of the Federationist would show it. Attention of the witness is called to the circular of November 26, 1907 (See page —), and reference to the stamp account and the directing of circulars account and other accounts might show the number sent out. The date would indicate that it was within a few days after November 26th, within a month before December 23rd. Has no recollection that it was given to the Associated Press, and sent to the labor press with a request that it be published. Has no recollection on that point. It was not issued in anticipation of an injunction. It was sent out as a matter of information in accordance with a resolution. It was written up, or fixed up to send out by President Gompers in accordance with instructions, and his name is there as attesting, and it was printed under his direction. It was not witness's understanding that it was sent out in anticipation of an injunction restraining the things which were forbidden, because he did not expect that an adverse injunction was going to be issued. Never expected it. It was sent out in response to the resolution adopted by the Convention. Thinks it was No. 49. Witness had nothing in mind with regard to what was going to happen. It was in accordance with the resolution and a statement of facts for the information of organized labor. It is his understanding that the resolution contains very nearly the following
909 language from the circular.

"It would be well for you, as central bodies, local unions and individual members of organized labor and sympathizers to call on business men in your respective localities, urge their sympathetic co-operation and ask them to write to the Buck's Stove and Range Company of St. Louis, urging it to make an honorable adjustment of its relations with organized labor."

The resolution was sent out in accordance with Resolution 49, and in accordance with the action of the Convention. The resolu-

tion left the details of carrying it out to the Executive Committee. The abandonment of the boycott by Mr. Gompers did not surprise the witness, when he discovered the injunction was in effect. His action did not lead witness to suspect that he might have had a sudden relapse. It was witness's view of it until after the contempt proceedings, that neither he or Mr. Gompers suspected that these official proceedings or the circulation of them interfered with the injunction. Has no knowledge that Mr. Gompers thought otherwise. He did not in view of the fact that when he returned, he learned what had been done, and what was Mr. Gompers' attitude, and that there was to be no circulation of it any further, think that Gompers might soon relapse into his former attitude.

(Page 1913.) Has no recollection of being at a meeting in Mr. Ralston's office with Mr. Davenport or Mr. Darlington. Has a recollection of being there with Mr. Parker, Mr. Spelling and Mr. Ralston. Has no recollection of questions and answers put by Mr. Davenport to Mr. Gompers on January 30, 1908, in Mr. Ralston's office. Does not — of being any place in this investigation with Judge Parker. Does not know whether Mr. Gompers
910 took the editorial in the American Federationist for February over to New York and showed it to Judge Parker and asked his opinion as to whether it violated the injunction. Has no knowledge on that subject.

Witness's attention is called to the joint editorial in the February, 1908, Federationist, and is asked what eminent counsel gave the advice therein referred to, and says that his understanding was that their counsel stated that so much of it as interfered with free press and free speech was void, and his understanding was that counsel had stated that so much of the injunction as interfered with the right of free speech and free press was void, and that was what he had in mind. Does not know how widely it was circulated. It was intended to go as far as the ordinary issues. He supposes the usual number 7,500. That can be easily ascertained from the records. Does not recall that that was the contention made before Mr. Justice Wright. Says that when he joined with them that was his understanding. His understanding was that that was the position taken by their counsel. His contention had always been that they could not be enjoined from the exercise of free speech and free press and that they had a right to refuse to give their patronage to anybody. They wanted to get before the Supreme Court the right to restrain a boycott and the matter of free press and free speech. What witness had in mind was the fact that they had the right to exercise free press and free speech, and could not be enjoined from exercising it. Had the right to refuse to patronize anybody or right to make
911 known to others any grievances he had against any firm or corporation. That is a right which the District Court of Appeals, as he believes, decided that they had, and in the opinion decided what a boycott was. Does not recollect anything about occurrences in the examination by Mr. Davenport of Mr. Gompers in the former contempt case. Does not recall the incident at all.

Witness does not suppose that he ever looked up the labor press in regard to the circular of November 26th being put in them. Did not read very many of the labor press papers. Never looked it up. Has no recollection of ever looking it up.

The financial statement contained in the report of the proceedings of 1908, relative to the expenditures of the fund obtained from the Urgent Appeal, and on page 44, is the report witness made to the Denver Convention, is accurate and has been passed as accurate.

Mr. Davenport reads in evidence the following:

The following is a statement of the amount received from the appeal issued to local unions requesting appropriations, to be used for the legal defense of the officers and members of the American Federation of Labor in the injunction suit of the Buck Stove and Range Company, and also an itemized statement of the moneys paid out of that fund, up to and including September 30, 1908:

Receipts.

Receipts	\$11,822 26
----------------	-------------

Expenses.

Printing:

3,000,000 circulars, and electrotyping.....	\$2,336 31
Address to Workers, resolutions, etc.....	93 25
25,000 appeals for contributions, printed matter for legislative work	107 50
26,300 envelopes for resolutions and letters.....	150 78
10,000 1-page folders and 500 1-cent envelopes.....	45 75
Clerk hire, addressing, folding and filling.....	778 23
Postage	2,368 00
30,000 Sulzer speeches containing President Gompers' editorial on Supreme Court Decision in Hatters' case.....	172 75

Salaries and expenses legislative committee:

M. Grant Hamilton.....	500 00
Jacob Tazelaar	450 00
J. D. Pierce	450 00
J. E. Roach.....	350 00
E. N. Nockels.....	306 75
Cal. Wyatt.....	200 00
C. P. Connolly, St. Louis, Mo., distributing resolutions.....	11 75
Hauling mail matter.....	28 55
Room rent for extra clerks.....	50 00
Janitor service	15 00
Refunds	1 00

Total	\$8,415 62
-------------	------------

Recapitulation.

Receipts	\$11,822 26
Expenses	8,415 62

Balance in fund October 1, 1908.....	\$3,406 64
--------------------------------------	------------

912 Their idea of a legal defense was to secure legislation that would free labor organizations from injunctions of that character. That was their idea of defense—to create a sentiment to secure legislation, and the fact that it was paid out of that particular fund was simply because they had a certain amount in there, and they drew from both funds. It might have been drawn out of the other funds. There was no special reason that it was drawn out of that except witness directed it should be done, so that they could run down both funds gradually. The expenses for the three million circulars addressed to workers were taken out of this fund, not because it was an appeal for appropriations, but simply because witness desired to draw from both funds, and not to exhaust either one. It was a whim more than anything else. There was no reason for it.

(Page 1940.) Mr. Gompers called in from the field Messrs. Hamilton, Tazelaar, Pierce, Roach and others and put them on work of endeavoring to get passed through Congress certain legislation, and the salaries and expenses of those gentlemen were paid out of this appeal fund. It was necessary to have these men in to explain to Congressmen and Senators the legislation wanted, and also they wanted them to do part of the work Mr. Davenport was doing at Congress before the different committees and before the Senate. The money was expended solely for the purpose of defense, to secure legislation that would relieve the A. F. of L. from attacks that were being made upon labor organizations by injunctions, and also from

the relentless warfare being waged against the Federation by
913 the Anti-Boycott Association, of which Mr. Davenport was one of chief counsel, and they felt that to get relief they should secure legislative relief through the enactment of an amendment to the Sherman anti-trust law and through the securing of anti-injunction legislation, as well as to carry the case to the Supreme Court of the United States. It was their opinion and judgment that they had the same right to try to secure this legislation and amendment to the Sherman anti-trust law and the anti-boycott legislation as the organization which Mr. Davenport represented had to prevent its securing.

An examination of the financial statements will show the receipt to a penny from all answers to the Urgent Appeal. The initials "L. D. F." indicate to what the receipts were assigned. The receipts run for quite a long time. The Federationist will show all the money received for the assessment for the legal defense fund. Another appeal or call for funds was issued and published at page 149 of the February, 1909, Federationist under date of January 18, 1909. Of the report of the proceedings of the Convention of 1909, there is a recapitulation of receipts and expenditures down to September 30, 1909, from that source, and they are in the Federationist too. An examination of the witness's report will show all the money received from the one cent assessment and from the appeals that were issued.

Would have to look up to see whether the balance of the \$11,000 receipts from that "Urgent Appeal" or any of it was during the

fiscal year from September, 1908, to September, 1909, expended for the defense of the suits. Part of the \$40,000 received from the call of January, 1909, must have been used—part of it was used.

914 Direct examination.

By Mr. RALSTON:

(Page 1947.) The expenses of the legal defense were paid out of the one cent assessment and Urgent Appeal fund. The effort to secure legislation and the carrying of the appeal was paid entirely out of these two funds, as witness recollects. Has no knowledge of taking any money out of the general fund for that purpose. Sending out three million circulars is quite a number. It means they were sent to or they tried to reach 1,500,000 people, members of the organization, asking them to use their best efforts with their congressmen and senators to favor legislation wanted. The Sulzer speech cost \$172.75 for the printing. Addressing cost some too. Not more than \$60.00, hardly that. Would not write more than 700 a day, so allowing \$2.00 a thousand would be about \$60.00. The circulars cost them \$2,336.31 and the postage was \$2,768.00.

(Page 948.) Witness does not know how Sulzer happened to make that speech other than that he has always proclaimed himself to be in favor of labor legislation and seems to think it has grievances that should be adjusted, and takes opportunities to do what he can to assist to create a sentiment in favor of the Federation's legislation. So far as witness knows, he nor anybody else connected with the Federation of Labor called Sulzer's attention to the editorials or other matters which he included in his speech, other than that witness supposes they sent a Federationist to each Congressman and Senator, and having special interest in the Federation, he probably read the article, and being interested in it, decided to make a
915 speech and put in Mr. Gompers' editorial, and witness believes, the decision in the Hatters' case, and then make a four or five minutes' talk, perhaps more than that. Witness knew nothing of the speech before it was made. Has been a life effort on the part of labor organizations for several years to secure legislation. Sulzer's speech was — March 17th. In March, on the 16th or 17th, the Executive Council met. There had been a call for a conference of the representatives of the National and International Trade and Labor Unions and organizations of farmers to meet in conference to consider and take action necessary to meet the situation among the working people of the country, as placed by decisions of the courts, and they adopted what is known as "Labor's Protest to Congress", under date of March 19th, which is in the record. They assembled on March 18, 1908 and debated. It looks as if Sulzer took notice of the conference of all the representatives of the international organizations as well as of the farmers' organizations. Sent out the speech shortly after. Does not recollect just how soon, but about that time. The Sulzer speech was to awaken the members of organized labor to the danger that might come to labor organizations through the attacks of the Anti-Boycott Association, through

its attorneys, through the Sherman Anti-Trust Law, and they desired to have it amended. When the law was passed it was the labor people's understanding that it was not intended to cover labor organizations, but only trusts and combinations to monopolize commodities. The speech was printed at the Government Printing Office. In sending out public documents that way, the Federation gives the order through a Mr. Smith who takes all orders where such a publication is desired, and the Federation pays for the printing. Knows of no one connected with the Federation, or its office, who had anything to do with the proof reading of either the Sulzer speech or of the exhibit as it was put in from the Congressional Record. The government attends to that itself. No one connected with the Federationist, that witness knows of, or with Executive Council, ever assumed responsibility for the fact that the Printing Office, in the proofreading, struck out the dash which separated the final three lines which have been objected to, from the editorial which precedes it. The witness and his associates had nothing to do with it, and were not responsible in any way, nor were they the cause of those three lines being inserted in or added to the editorial which Mr. Sulzer undertook to incorporate in his speech. There is the same kind of dash separating that three-line editorial from the main editorial that there is under it, separating it from the editorial heading with large faced type below, showing it to be a distinct editorial. Witness first learned that those three lines were incorporated into the Sulzer speech since these proceedings commenced here. Did not have any idea it was incorporated, when witness circulated the copies of Sulzer's speech through the country. Did not read it. The only thing he read was the matter on page 24, where he says, "Mr. Chairman, that decision is the supreme law of the land," and so on down to the end of that page. So far as witness knows it was never the subject of comment in the Federation headquarters that that reference to the Stove Company was included in his speech. Nobody that witness knows of, connected with the A. F. of L. knew anything about it. It was never called to witness's attention. He did not know and don't know of anybody who did. Has no knowledge that Mr. Gompers knew of it. It does not appear in the editorial that it has any logical or necessary connection with the preceding argument. The article has the sub-heading "Labor not disheartened". It would appear that Mr. Sulzer himself must have put all that in, or it was put in by the mistake of the printer. His attention was first called to the three lines in question after he discovered that the Committee had inserted the expenses of the appeal for appropriations in the proceedings, and when he noticed the three million, he wondered what they were going to prove by that. Got the circulars and read them over and in reading over the Sulzer's speech, or glancing over it to find if there was anything that could possibly affect the Buck's Stove and Range Company, he came across those three lines. That is since these proceedings opened here. In reading over found that Company's name was mentioned. That is the only place it was mentioned, and he supposes that is why the Com-

mittee included it with the idea in mind that if it was overlooked it would appear that the Federation had started to send out 3,000,000- circulars for the purpose of boycotting the Buck's Stove and Range Company, when in fact the circulars were sent out to secure legislation that would relieve them from both the hardships that they felt were brought about by the abuse of the injunction and by the fact that the Supreme Court had held that part of the Sherman anti-trust law was applied to it, or could be applied under certain circumstances to labor organizations.

918 (Page 1956.) In the proceedings of 1907 there is addenda of 1 page and 356 pages, with the index, and besides that there are fourteen pages with numerals in the first part of the book—371 pages; nearly all of it in double column, set in six point type. All the resolutions are solid. There are 172 resolutions which treat of different subjects. Some of them, of course, treat of the same subject. Then there is the propositions in President Gompers' report, and the Executive Council report, and it seems to witness there ought to be between 200 and 300 subjects of various kinds, perhaps nearer 200 than 300. From such observation as witness has had of boycotts, it is not the sort of document that would be sent out to favor one, and so far as witness knows, it was not sent out for any such purpose by anybody. Witness had no idea of favoring a boycott when he allowed these to go through the office. There was nothing at the time to call the Stove Company matter to mind any more than two or three hundred other subjects embraced in this volume was concerned. This is a resolution to which witness paid very little attention. It is simply a record, and witness went through it and got through with it, and had it printed, and it went out in the usual course.

Nothing was done by the Executive Council, so far as witness knows, with relation to Resolution No. 49, except sending out the circular of November 26th. There is nothing in that circular asking anybody to withhold patronage from the Stove Company, or suggesting that anybody be threatened who dealt with them. Understands the law here in accordance with the decision of the District

Court of Appeals is that they can prevent citizens from com-
919 pelling other men to refrain from patronizing an unfair firm. The idea of compulsion of any kind, moral, financial, or physical, is not expressed in the circular of November 26th. Does not know of anything done which might be regarded as of a boycotting tendency, between the sending out of the circular of November 26th, and the injunction of December 23, 1907. Has no recollection of any correspondence either way with any member of the organizations affiliated with the A. F. of L., relative to the conduct of any boycott against the Stove Company. If any communications came in, he might not recollect, but if he made any reply, thinks he would recollect. Has no recollection of ever having written anything in regard to it. So far as witness's correspondence is concerned, and within the scope of his knowledge, knows of nothing occurring, in any manner, after December 23rd, tending to boycott

the Stove Company. Witness's attention is called to the following lines near the bottom of page 29 of the January, 1908, Federationist:

"Tell your wives and friends all about Van Cleave's \$1,500,000 war fund and the use to which it is being put,"

and is asked whether that has reference to any boycott of the Stove Company, and says that it is only furnishing the information that the war fund was to be raised. It says

"Readers, tell your wives and friends all about Van Cleave's \$1,500,000 war fund and the use to which it is being put".

The attention of the delegates of the A. F. of L. had been directed to the purposes for which the fund was being raised by Mr. Gompers at the meeting of the 1907 Convention at Norfolk.

920 The respondents offer in evidence the following pamphlet to which Mr. Davenport objects as immaterial, irrelevant and cumbering the record with nothing, and the ruling is reserved:

Labor Aroused!

Resents Emphatically the Campaign of Character Assassination Conducted by the National Association of Manufacturers.

With Reverence for the History and Achievements of Labor—With Confidence in the Virility of the Trade Union Movement and its Triumph for the Future—The Norfolk Convention Courageously Faces Labor's Opponents and Defies Them to Do Their Worst.

This issued in response to the many calls for an authoritative account of the action taken by the Norfolk convention (November, 1907) of the American Federation of Labor, dealing with the attacks made by the National Association of Manufacturers upon the American Federation of Labor, its officers, their honesty and loyalty to the cause of labor, their administration of the affairs of the Federation and management of its official magazine, the American Federationist.

Members and friends of organized labor should read carefully the facts, the logic, and the arguments herein presented, which produced such spontaneous outbursts of enthusiasm and marked expressions of confidence in their officers by the delegates representing the entire membership of the A. F. of L. assembled at Norfolk.

921 Endorsement of action already taken by A. F. of L. officers, their unanimous re-election with every mark of esteem and the furnishing of funds to withstand future attacks from the National Association of Manufacturers, should have convinced these opponents that their base methods are fully comprehended by the labor movement and will be successfully resisted. Attacks upon officers, injunction suits and newspaper slander will come to naught even were there ten times a million and a half dollars to be used as a ware fund in the effort to crush trade unions.

"Those, however, who had not the opportunity of attending the Norfolk convention should be made thoroughly acquainted with the tactics of the National Association of Manufacturers for months pre-

ceding the convention. The official action of the convention on this subject should be conveniently at hand for reference. It may be that the campaign of scurrilous abuse and lying slander will not stop even though the National Association of Manufacturers has been rebuked and condemned by organized labor in convention assembled.

"It may be that the same tactics which have been used against the executive officers of the A. F. of L. and of International unions will now be used in various parts of the country in an effort to disrupt and disorganize the local labor movement. This on the theory that the rank and file of the membership may be misled because not thoroughly or correctly informed as to what happened when such attacks were made on the highest officers of the trade union movement.

"Organized labor and its friends should preserve this document for future reference so they may be able at once to recognize the character of such attacks wherever made and may have at hand
922 the means of dealing with them as decisively and triumphantly and effectively as did the Norfolk convention with the attacks upon the A. F. of L. and its officers.

"In order to lay before the reader all the necessary information so that the case may be viewed as a whole the following subjects are presented in the succeeding pages:

"1. President Gompers' reply to the slanderous attacks made upon him personally and his management of the American Federationist. These attacks had been circulated by the National Association of Manufacturers through the press of the country. Included in this statement, and a most important part of it, is President Gompers' recital of the dastardly attempt made by an agent of the National Association of Manufacturers to bribe him to betray his associates by giving false testimony and in a similar manner to discredit the A. F. of L. and deliver it over to the hostile manufacturers' association. Only brief extracts from this statement were published by the daily press. It is here printed in full.

"2. The vote of confidence in President Gompers and the Executive Council unanimously passed by the Norfolk Convention immediately after hearing this statement. The expressions of indignation that such an attempt should have been made and the enthusiasm over the manner in which it was met and repelled and the 'engineer hoist with his own petard' were of such a remarkable character that they beggar description.

"Before the campaign of lying, slander and personal vilification was entered upon, Mr. Van Cleave, president of the National Association of Manufacturers, brought suit against the officers of
923 the A. F. of L. and others to restrain the A. F. of L. from publishing the unfair Buck's Stove and Range Company on the 'We don't Patronize' List in the American Federationist, the official magazine of the A. F. of L.

"3. The special committee of the Norfolk convention made a report strongly endorsing the stand taken by President Gompers and the Executive Council in the matter of publishing the unfair Buck's Stove and Range Company and heartily commending their whole

course in relation to the National Association of Manufacturers. This action is worthy of as careful study as the official reports themselves, because it shows how promptly and unanimously the convention ratified the action of its officers and authorized them to proceed according to their own judgment in accordance with the best interests of Labor.

"4. The portion of President Gompers' report dealing with this injunction suit will be found in these pages, also that part dealing with the general policy and hostile tactics of the National Association of Manufacturers, from the time they began to raise the million and a half dollar war fund to 'educate' the trade unions by crushing them out of existence.

"At the time President Gompers' report was offered to the convention the court had made no decision on the petition by the manufacturers' association for a restraining order in the injunction case. That is still the status of affairs at the time this pamphlet is issued. Later developments in the case will be given through the columns of the American Federationist, but whether or not the injunction is issued the argument against the right to issue it *the argu-*
 924 *ment against the right to issue it* still holds good and this portion of President Gompers' report will become a part of the permanent literature on the subject of the injunction in labor matters. In this case the attempt to deny the right of free speech and of a free press, render the arguments on human freedom of special importance.

"5. The report of the Executive Council of the A. F. of L. on the attempt to enjoin the publication of the unfair Buck's Stove and Range Company and their comment on the hostile action of the manufacturers' association is given as it forms part of the history of the affair.

"On reading the resolution it will be noted that the convention gave more than a verbal endorsement. It also provided for raising whatever funds might be necessary to meet further attacks of the National Association of Manufacturers.

"Judging by the past and by the character of the manufacturers' association, more venomous and treacherous attacks may be expected in the future from its spies and hirelings. These can not, of course, be met in detail beforehand, but it is well to bear in mind that the animus of these attacks has already been so thoroughly demonstrated that no intelligent member of organized labor, nor, indeed, any fair-minded person, should for a moment be misled by them, no matter in what guise they appear. The entire policy of the Manufacturers' Association has been one of treachery, lying and personal abuse. Obviously it fails to recognize the fact that trade unions would exist
 925 and flourish even if every employer in the country opposed them. They are as inevitable as the modern system of industry. Fortunately for the peace and progress of the country the large majority of employers recognize the logical necessity of organized labor.

"The National Association of Manufacturers alone sets itself up as a small but exceedingly bitter band of reactionaries. Absolutely

selfish are the plans of the Van Cleave type of employers. The very narrowest sort of personal selfishness at that; not at all the enlightened "self-interest" which sometimes almost masquerades as altruism.

"The Van Cleave followers fear the trade-union because it ensures to the workers the strength and the ability to assert their rights in the economic struggle.

"So blinded is the National Association of Manufacturers by personal avarice that it fails to realize how offensive to all sense of public decency and good citizenship is its campaign of slanderous personal attack upon those whom Labor honors with its leadership and confidence.

"So futile thus far have been its attacks that in 1907 the A. F. of L. showed the highest membership it has ever had.

"Even political antagonists have mostly eliminated the weapon of personal abuse because of the repugnance it arouses among decent-minded people.

"Van Cleave and his association but proclaim their own low-minded estimate of humanity when they resort to such methods.

"They hope for success by appealing to the most selfish and debasing tendencies of human nature.

926 "They plan to disrupt the labor movement by destroying confidence and sowing the seed of suspicion, distrust, and hatred among its members.

"Evidently the National Association of Manufacturers makes the mistake of assuming that the men of organized labor are of the low moral level of its (National Association of Manufacturers) own agents. It will not succeed.

"The Norfolk convention of the A. F. of L. demonstrated the fact that labor's representatives—and likewise its rank and file—have quite intelligence and honesty enough to perceive the presence of the snake in the grass. Any attempt to sow discord and distrust in any locality by whomsoever will be recognized at once by organized labor as an indication that the agents of the National Association of Manufacturers are at work. Such efforts being understood, they will be dealt with and defeated.

"It is well to remember that the National Association of Manufacturers represents only a small portion of the small business men of the country. Its base methods should not be taken as typical of employers generally. That would be doing a great injustice to the many conscientious and fairminded employers throughout the country who recognize the right of labor to organize and who prefer to deal with unions in making wage agreements.

"In fact so uncertain is the membership of the National Association of Manufacturers that it dares not publish a list of its members. Its financial transactions are evidently of such character that they are perforce shrouded in obscurity. The tactics of the National Association of Manufacturers are destructive. For this reason the

927 A. F. of L. takes a strong stand against its every hostile aggression. The sooner the Van Cleaves, Parrys, and Posts are convinced of the futility of their style of campaign the sooner

will labor be able to utilize all its energy for the constructive, uplifting, and educational work which is its prime object.

President Gompers' Reply.

On the ninth day of the Norfolk convention President Gompers made the following reply to attacks upon himself and other A. F. of L. officers by the National Association of Manufacturers:

928 The attack by the agents of the National Association of Manufacturers upon the officers of the A. F. of L. could not come at a more opportune time than just before and during our annual convention. It will have directly the opposite effect from that intended. Instead of sowing suspicion and disrupting our forces it will concentrate their energy upon defensive measures.

While I might personally prefer to let my life work speak for itself as to my honesty and loyalty to the movement I have the honor in part to represent, yet such scurrilous and lying attacks can not be passed over in silence by the labor movement of the country and I feel that the general public should be given the truth. That our opponents descend to personal abuse shows the low character of the campaign they are conducting. That they had to go back sixteen years to fabricate a charge against my honesty is significant, for I have been under public scrutiny all the years since.

We have with us here and there is in our office a mass of most interesting and remarkable documents which throw light on the methods and motives and personality of those who have instigated these recent attacks.

Public sentiment will be shocked at the revelation of the methods employed by the spies and agents of the Manufacturers' Association. I shall lay much of this information before you and the general public.

The unions of the country have been simmering with resentment since I informed them through the American Federationist of the real purposes for which the Manufacturers' Association's million and a half dollar war fund was to be used. I published an editorial in the American Federationist last July and another in September stating that the fund would be used in an attempt to vilify and discredit the officials of our movement—that detectives and spies were already swarming around our unions not only trying to get information but busily engaged in fomenting trouble and concocting lies as to the actions of such unions and their members. My editorials were based on actual information. A symposium in our September issue contributed by our most prominent labor officials showed that they, too, realized the character of the fight against us. This recent attack upon the officers of the A. F. of L. is the proof to our

929 members of how accurately we foretold the action of the National Association of Manufacturers. They have made a very poor job of it. They have to go back sixteen years in order to find any peg upon which they can hang a possible suspicion.

The man Rice who makes affidavit of having paid and received certain money from Samuel Gompers, is a man who was formerly

an advertising solicitor employed by the American Federation of Labor. He was dismissed for dishonesty. We have records in our office to prove this. After his dismissal by the A. F. of L., he traveled through various States getting out "fake" souvenirs and similar publications, cheating business men and limiting his own pockets through his false assertion that he was the agent of the A. F. of L. We usually received proof of his rascality after he had fled from the scene of operation, so prosecution was difficult.

Rice's statements as to the accounts paid the A. F. of L. for the advertising privileges of its annual publication from the years 1893 to 1899, are not only incorrect as to the amounts paid, but he omits the important fact that such sums as he did pay were expended for the Federation and not for my personal use. The records of the A. F. of L. show that these sums received from the sale of the advertising privilege of our annual souvenir were used to buy office furniture and to get out plates for some of our earlier pamphlets. It must be remembered that the Federation was up to 1893 a comparatively new organization, struggling to get an equipment for its organizing and educational work.

Mr. Rice and his confederates perverted the original idea of the A. F. of L. souvenir publication and both before and after our magazine was established they systematically plundered both the business men and the local labor movement in various sections of the country.

At our 1901 convention of the Federation held at Scranton, Pennsylvania, our Executive Council called special attention to the deceptive publications which were illegally using the name of the A. F. of L. and asked and received authority to prosecute any persons who published souvenirs, directories or other publications in which the A. F. of L. was alleged as the beneficiary. This wiped out the general evil to some extent, but Rice and his confederates then turned their attention to getting out fake souvenirs, alleging State and City Central Bodies as the beneficiaries. Their swindles were even then so bold that several times they only escaped prosecution by hasty departure to fresh fields and pastures new. I have letters in this convention all admitting it.

There are warrants out for Henry Rice in several States, sworn to by business men whom he has fleeced. We have in our office original correspondence voluntarily sent to us proving that Henry Rice has over and over again stolen from those who employed him. He is not in fear of physical assault as he claims but he may well fear that he will be arrested and sentenced to serve time for his swindles. The National Association of Manufacturers can not plead ignorance of this man's character when they hire him to defame me. The fact is that no other sort of a man could be found to do this kind of work.

A fac-simile receipt has been published in order to give the impression that had some questionable financial transactions with Rice. That was simply an ordinary business transaction, the money received from Rice was used as I have already explained, wholly for the A. F. of L.

The A. F. of L. and many business men have suffered from Rice's

depredations and did we wish evil to the Manufacturers' Association, we could not hope for anything worse than that they should have him as one of their agents.

The attack upon the Federation officials misrepresents the action which the A. F. of L. has taken on several occasions in its 930 conventions.

For instance, it is charged that I was "investigated" at the Chicago convention in 1893, and the intimation is made that I was "white washed."

It is true that I had some opposition. There was a delegate who had the honorable ambition to succeed me as president and he had a following among the delegates. Some of my opponents started a rumor that I had not accounted satisfactorily for the money received for the sale of the advertising privilege for our souvenir that year. A committee of five was appointed to investigate the matter, three of the five were known to be personally opposed to my re-election as president and in favor of the election of my opponent.

The committee found that the rumors were baseless. I had properly accounted for every dollar received. It is true that the committee recommended that no further annual souvenirs be issued, but that was because the convention decided to establish our official monthly magazine, the "American Federationist." The report of the committee showing that I had properly fulfilled the trust reposed in me was unanimously adopted by the convention. I was re-elected president and in addition made editor of our official magazine, authorized to be established by that convention.

In regard to the expense of our magazine, the "American Federationist," I will say that we do pay our advertising manager fifty per cent commission on advertising. He is an able man who has received from other firms even higher salary than we pay. We consider the laborer worthy of his hire. Our advertising manager does not get the fifty per cent for his personal share, but is obliged to pay a commission and traveling expenses to the force of canvassers whom he employs and keeps on the road soliciting advertisements for the "American Federationist." This makes a total of about forty-two per cent, leaving him about eight per cent for work as manager.

It is true that we are obliged to pay somewhat higher advertising commission than daily newspapers or an ordinary magazine. Our magazine is national in its scope and appeal, yet there are certain kinds of advertising which we do not care to solicit or accept. For instance, we do not accept the advertisements of a firm known to be unfair to organized labor, not even if that firm were willing to pay \$5,000 a page per insertion. It would surprise even you, much less the public, to know the sums we are offered if we will accept certain classes of advertisements.

I want to read a statement contained in the journal of the National Association of Manufacturers. In one part it says: "Would it not be natural for Mr. Gompers to take the position of Advertising Solicitor in preference to that of President of the American Federation of Labor as the remuneration is greater?"

I leave it to you who know me to say what sort of an advertising

solicitor I would make. And secondly, the whole make-up of these people, our enemies, their view and their conduct is measured by the dollar mark; they know nothing of conviction and principle. They imagine if there be a dollar at the end of a proposition opposed to anything in which they may believe, then change your belief in order to get the dollar. They do not understand and can not appreciate that there are some men in this world who have convictions and who live for principle, and the question of dollars is an after consideration. But to resume:

I also charge openly and pointedly that the Manufacturers' Association has for the past two years conducted a secret and wide-spread boycott against the "American Federationist." We have ample proof of this in our records. It penalizes manufacturers who advertise in our columns. It terrorizes merchants who would like to advertise with us by threatening to ruin their business if they do. This is the association which conducts a secret boycott itself and is trying to get the courts to enjoin the A. F. of L. from pub-

931 lishing an open "We Don't Patronize" list of unfair firms in the "American Federationist." The blacklisting and boycotting tactics of the Manufacturers' Association add considerably to the expense and trouble of securing advertising for the "American Federationist," but we are glad to say that many of the best firms in the country refuse to be terrorized by the Manufacturers' Association.

It is true that in 1903 and 1904 we had an apparent deficit on the "American Federationist." Our secretary's report, from which this was piously culled by our opponents, was only of the current condition and did not mention several thousand dollars of collectable bills which were a good asset and were subsequently realized upon.

In 1905 our expenses were less because the expenditures of the two previous years in enlarging and advertising our publication had borne such good fruit that we again showed a surplus on current business. At no time has our official magazine been a burden upon our members, for it has every year carried several thousands of dollars' worth of official printing for which it makes no charge upon the general fund and which is absolutely necessary for the information of our members.

We might have had an actual deficit greater than any ever alleged against the magazine and the deficit would still have been less than the cost of official printing to the Federation if we were without an official publication.

Our subscribers and our advertising carry our magazine as a good legitimate business proposition without expense to our members and with no appropriation from our general fund. This is so well known in the labor movement that statements to the contrary only cause a smile among our members, but naturally the general public is not so well informed.

It would not be necessary to go into these matters in detail did every one understand that not only are our entire financial transactions published every month in the "American Federationist," but every official act is carefully scrutinized by our annual convention.

The garbled extracts published by the Manufacturers' Association were taken from our published financial reports which are on file in public libraries and everywhere that our financial transactions have been audited by a special committee each year and passed upon by the convention. It requires rather an acrobatic ability to wrench these figures out of their sequence in order to deceive the public. It is a huge joke to the labor movement to pretend that there is anything secret about the American Federation of Labor finances.

Our expenditures each year are not only authorized but approved by the rank and file who pay the per capita tax.

I think the National Association of Manufacturers will do well to follow our example and publish each month the subscriptions received to the million and a half dollar war fund. I challenge it to publish the true story for what the money is expended.

But to resume as to our own finances, not only do the secretary, treasurer and myself present extended reports of everything done during the year, but we also join with our eight vice-presidents in an Executive Council report to the convention. These are not only read and printed as a part of the public proceedings, but committees are appointed to analyze and consider these reports and the verdict of the Committee on Officers' Reports is subject to debate by the convention. Our conventions are open and visitors, friends or opponents, are permitted to hear our every utterance. The representatives of the press are presented ample opportunity for making a report of our proceedings to publish to the world. Could there be more publicity? Our members realize that the Manufacturers' Association is trying to mislead the public, when it talks about

932 our Executive Council having either opportunity or power to abuse the trust reposed in it.

My colleagues and I court the fullest possible inquiry from you, the delegates representing our two million members, who are at this convention, and I hope to send broadcast the invitation to the rank and file of our membership to study with renewed vigilance the acts of its officers in the coming year. We are proud in the knowledge that we have administered the affairs of the Federation not only honestly, but economically and intelligently.

As to there being an official ring within the Federation, I ask those interested to study the doings of the Norfolk Convention. The President, the Secretary, Treasurer and eight vice-presidents of the A. F. of L. are nominated and elected annually by the convention. It is the most democratic plan that could be devised. The members of organized labor are satisfied with it. They know how their officers are chosen and how their affairs are administered. The attacks of the National Association of Manufacturers are an insult to the intelligence of our members. Such attacks have proved a boomerang, in that they have intensified the feeling of the delegates against the Manufacturers' Association and resulted in more definite and extensive defensive measures than would have been the case had the Manufacturers' Association not made a slanderous personal attack on the Federation officials just before and during the convention.

The statement that the auditors were chosen by me from those who can be depended upon to cover up any improper transaction, is either the result of ignorance or maliciousness. As a matter of fact I select each year three officers of three different organizations and these officers in turn select an auditor each. Naturally I can have no knowledge in advance of such selection. A few years ago a man was selected as an auditor whose business interests prompted him to be exceptionally critical. Several other auditors have been appointed who were at variance with me, and in every instance there has been a unanimous and uniform report as to the honesty and the faithfulness of every financial transaction of the officers of the A. F. of L.

I understand the present bitterness is because the National Association of Manufacturers finds its membership and its contributions falling off.

Its present methods are bound to disgust upright and honorable business men quite as much as they do the wage workers. We have been thanked by upright and honorable business men and public-spirited citizens all over the country for pointing out the methods of the Manufacturers' Association.

This form of attack is not new. The British trade unions passed through just such an ordeal about 1872, and emerged stronger than ever. We expect these attacks to continue for awhile. We shall meet them at every point. They will tend to keep our members united, loyal, and full of enthusiasm.

The National Association of Manufacturers' constitutes a very small minority of even the small manufacturers of the country, but we do not believe that even that small number will long lead themselves to the contemptible methods pursued by their leaders.

But it is my purpose to present to you some further details regarding the work of our Federation, the difficulties which beset its progress, and the character and doings of the creature of the Manufacturers' Association, Henry Rice.

Honest and competent solicitors are the hardest people to secure for any kind of a publication. It is a position that depends absolutely upon the individual's ability. To secure specially adapted solicitors for any particular line is still more difficult, and in the

923 special line those familiar with the labor movement are extremely scarce. But, while there are a number of compe-

924 tent solicitors who understand the labor field, to secure honest and reliable ones reduces the number very materially. As I have endeavored, as far as practical, to employ men not only who understood the labor movement, but who had been connected with the movement, you will readily realize that the number of solicitors are limited to about a dozen throughout the United States. It was, therefore, found very difficult to secure the services of any competent canvassers to secure advertisements for the "American Federationist."

You will readily realize that the securing of advertisements for a monthly publication is based upon a purely business proposition as an advertising medium. It is far more difficult to secure patronage

and it takes considerably longer to close agreements with business firms for advertising space.

After the Chicago convention, I employed Henry Rice to secure advertisements upon a commission basis for the "American Federationist." The results, however, were not satisfactory. Sometime later I secured the services of other solicitors, among them the present advertising manager of the "American Federationist." This was in 1899. He agreed to secure for us a thousand dollars' worth of advertising a year. He had not long been in the field, when I received letters from him in which he declined to continue working on the same publication with certain canvassers, stating that some transactions had taken place which he considered dishonest, and that these might be laid to him instead of to the party who was securing money contrary to my positive instructions and for purposes other than advertising. I asked him to furnish me proof, and in letters from him under dates of June 8, 15 and 25, and November 27, 1899, he gave me specific cases where Henry Rice had received money from firms in the name of the American Federation of Labor and had kept the same for his own benefit and use. Among the cases mentioned were the following:

Rice had secured a check from the Capewell Horse Nail Company, Hartford, Conn., for \$180.00, which he had cashed and retained the money.

The Rand Drill Company, 100 Broadway, New York City, gave check for \$25.00, dated June 2d, 1899, upon the order of the American Federation of Labor. Henry Rice, agent, and same was cashed by Rice and retained.

The United Gas Improvement Company, of Philadelphia, gave check for \$100.00.

Also Browning, King & Co., New York City.

I made an investigation as soon as it was possible for me to do so of the statements here made. In the meantime I also received charges against Rice from many other sources, among them one from Henry White, then secretary of the United Garment Workers of America. The evidence and other information sustained these and other charges against Mr. Rice as solicitor for the "American Federationist." Those firms from whom money was obtained had been interviewed regarding the prosecution of said Rice, but as you are aware business houses are averse to lose time or to get the public notoriety in prosecuting cases of this character. The attempt to secure prosecution naturally aroused the enmity of Rice and we thought this would prevent him from doing any further swindling in the name of the A. F. of L., but in this we were mistaken.

Since that time we have received numerous complaints from both solicitors and business houses, of money being paid for advertisements which were agreed to be printed but which never appeared in the "American Federationist," also of donations being solicited for the American Federation of Labor, and while these acts were committed by several different people, the majority of them were generally traced to this man Rice.

Every opportunity was taken advantage of by him and those who

934 afterwards became associated with him to use the name of the American Federation of Labor and its prestige to secure money from business men.

In the year 1901 Rice visited the city of Scranton and became acquainted with some local labor men and made arrangements with them to buy the privilege of publishing and issuing an official book for the Central Labor Union of that city. After arrangements were made, he proceeded to New York and interested a publisher with whom he was formerly associated, and the two proceeded to Scranton and made an agreement to publish and issue a souvenir publication for the Central Labor Union of Scranton. But instead of issuing and publishing a souvenir for that body, they arranged a prospectus for the souvenir, not for the Central Labor Union of Scranton, but for the convention of the American Federation of Labor, as this convention was to be held in the city of Scranton in December of that year. The prospectus read: "Convention Souvenir, American Federation of Labor," and on the cover was a reproduction of our eight hour badge, used as a seal. On the title page was "Convention Souvenir of the American Federation of Labor, issued for the Twenty-first Annual Convention, 1901."

The photographs of the members of our Executive Council, including myself, were used in the prospectus. The official letter-head of the American Federation of Labor was counterfeited; the names of all of the executive officers of the A. F. of L. were printed thereon and a credential was written on this fraudulent official letter-head requesting advertisements to be published in the alleged official souvenir of the then forth-coming convention of the American Federation of Labor. Advertisements and donations were solicited in the name of the American Federation of Labor throughout the United States by Rice and others. Those matters were brought to my attention on November 26, 1901. I mailed a circular letter to a very large number of business men. In that circular I called attention to the fraudulent or unauthorized publication assumed to be issued in the name of the American Federation of Labor. This course was pursued in order to protect the good name and interest of our Federation as well as to protect the business public.

As a result of this circular I received numerous letters from firms throughout the United States, informing me that donations, subscriptions, book-orders and advertisements had been solicited upon the claim that the funds were to go into the treasury of the American Federation of Labor, and that the names of Secretary Morrison and myself had been used in those solicitations. The result of the circular was that several firms refused to pay for the advertisements the contracts for which were obtained under false pretenses. Several of these firms sent to us duplicates of the contracts which they had issued, as well as stating that the solicitation was for the American Federation of Labor. The blank contracts stated that this souvenir was for the "Twenty-first Annual Convention of the American Federation of Labor."

The very forgeries of the names of Secretary Morrison, members of the Executive Council and myself, the counterfeit letterheads

with our names forged or fraudulently reproduced for the purpose of swindling business men, is now being used by the National Association of Manufacturers, to whom evidently Rice gave the copies, as reflecting upon our conduct. Through his own villainy he now has hoodwinked the willing manufacturers, who gladly would jump at anything to try to destroy the characters of the men in the labor movement, into the belief that it reflects upon us.

This circular also resulted in a quarrel between Rice and the promoter through which it was discovered that Rice had been swindling the promoter also. He secured a check for \$50.00 from Kimbach & Weichel, of Scranton, endorsed and cashed the same and retained the money obtained thereon. From that on he started on to secure all the money he could before the promoter had an opportunity to collect.

When our convention took place in Scranton, Pa., in 1901, a souvenir book which had the appearance in every way of being a book published by the American Federation of Labor was distributed at the convention as an official souvenir of the American Federation of Labor. I laid this and all evidence secured together with the prospectus, credentials, contracts, receipts, letters of firms, as well as canceled checks made out to the American Federation of Labor, before the Executive Council in the city of Scranton, and I recommended that action be taken to prevent this man Rice and his promoter and others of his kind from swindling people in the name of the American Federation of Labor. You will find the result of this in the official proceedings of the Scranton Convention, adopted on December 14, 1901, on the recommendation of the Committee on Executive Council's report, under the head of "Deceptive Publications," a denunciation of this souvenir and those connected with it; also a clause prohibiting central labor unions from issuing or publishing any souvenir publication for any convention of the American Federation of Labor or for any other purpose, if the convention of the American Federation of Labor is held in the said city the year of said issue. These resolutions were endorsed by the committee and unanimously adopted by the convention, and for years a warning containing these resolutions has been published in the "American Federationist" with every issue.

After the convention adjourned Rice secured a number of the books which had been printed and distributed at the Scranton Convention, and on his own account secured advertisements from a number of firms from whom he could not get the advance payments, had them printed in a couple of pages and inserted them in the books and collected the money and checks in the name of the American Federation of Labor. Among the firms thus fleeced were:

Fleischman Bakery Company, New York.
Ebling Brewing Company, New York.
Eckhart Brothers of Bridgeport.
Central Park Brewing Company of New York.
Rockford Bread Co., of New York.
Lewis Nixon, leader of Tammany Hall.
Ivan, Frank & Company, of New York.
Blickensderfer Typewriter Company, Stamford, Conn.

I have in my possession the receipts signed by Rice, which are subject to your scrutiny and disposition. Henry Rice later secured further contracts for advertisements in the souvenir book already published, later inserted additional pages of advertisements in the souvenir. The names of the firms which were thus swindled are as follows:

Ohio Ceramic Engineering Co., No. 56 Fall street, Cleveland, Ohio	\$15
Norcross Co., Feb., 1902, Cleveland, O.	5
City Foundry Co., Feb. 14, 1902, Cleveland, O.	25
Born Steel Range Co., Jan. 6, 1902, Cleveland, O.	20
Kilby Mfg. Co., Lake and Kirtland streets, Jan. 13, 1902, Cleveland, O.	30
Garrett Cromwell Engineering Co., Jan. 7, 1902, Cleveland, O.	30
S. Buhner, No. 68 Medwin street, Jan. 17, 1902, Cleveland, O.	15
Chisholm & Moore Mfg. Co., Lake and Kirtland streets, Jan. 8, 1902	30
Webster, Camp & Lane Co., Akron, O., Jan. 8, 1902	25
Dayton Malleable Iron Co., Dayton, O., Jan. 7, 1902	60
John Charles & Co., Pittsburg, Pa., Jan. 14, 1902	10
Stoddard Mfg. Co., Dayton, O., Feb. 8, 1902	30
936 Mead Paper Co., Dayton, O., Jan. 14, 1902	15
Curtice Bros. Co., Rochester, N. Y., Jan. 14, 1902	30
Goodell Pratt Co., Greenfield, Mass., Jan. 22, 1902	50
Aultman, Miller & Co., Akron, O.	60
Owen Machine Tool Co., Springfield, O.	60
Akron Foundry Co., Akron, O.	30
National Cash Register Co., Dayton, O.	100

I have in my possession all of the canceled checks which were used in the payment of the above, the envelopes in which they were mailed as well as letters and documents from the firms which paid those checks.

I have the incriminating letters of Rice and a labor man of Pennsylvania whom he duped in fraudulently issuing a fake souvenir for the Pennsylvania State Federation of Labor. They are here for your inspection. During the time that Rice was prosecuting the work of getting out the publication for the Pennsylvania State Federation of Labor that had not yet been formed, he immediately started in to swindle his new partner, and about the beginning of April forged the name of Matthew Quay, Senator of Pennsylvania, to a contract of \$200.00, sent the same to his (Rice's) partner and obtained his commission thereon. When an advance copy of the book was issued then it was a struggle between the said Rice and the party to whom the contracts were to be paid, naming his partner who paid the commission thereon, as to who would get the money due on the contracts. It is sufficient to say that Rice, being an expert in that line, carried off most of the money. Not only that, he left a bill due for the printing of the book out of which he swindled the Tribune Publishing Company, of Scranton, to the amount of \$185.00. The bill is now in my possession and is dated May 1,

1902. The bill had never been paid by Rice, but had to be made good through the new organization.

I might say another word in regard to this man before I reach the other paragraph, and that is that he had the ability to swindle me, and it is not difficult, perhaps, to do that, because those who know me know I have not a very great turn of mind toward financial affairs and the administration of financial affairs. But I want you to know this. At the convention in Denver in 1894, Mr. John McBride was elected president, and my term expired immediately. Before going to Denver, Henry Rice told me he had a great venture in his new publishing operations; that he was going to be good and honest and straightforward, and wanted to have an opportunity to have a new start, and he wheedled out of me every dollar I owned in the world, the scrapings and boardings of my wife for years. I turned it over to him in the hope of helping him, and when I came back from the Denver convention to my home in New York, Rice in the meantime having engaged Herr Johann Most as a play actor to star in a play called "Die Weber" (The Weavers), and organized a company. He lost every dollar of his own and the few pennies I had. So far as I am concerned I did not know he was going to invest in such a darn fool transaction, or at least I might have been on to that trick.

In this entire matter it is sufficient to say that to prevent further imposition upon and swindling in the name of the different State Federations throughout the country by either Rice or others of his kind, I wrote to the secretaries of the different State Federations throughout the United States warning them of Rice and his ilk.

At the following conventions of the State Federation of the State of Pennsylvania, in March, 1903, this whole matter was investigated by a committee of said organization, basing their investigation upon a letter from me to them, calling attention to the swindling that was being conducted by the use of the name of the different labor organizations, and asking them to lend their aid to prevent its recurrence.

937 The convention adopted resolutions, exposing the fraud, in which Mr. Henry Rice figured, and prohibiting the use of the name of the State Federation from being used for the publishing or issuing of any souvenirs.

Realizing how difficult it would be to get business men to prosecute Rice or the different promoters with whom he was connected, and desiring to secure competent testimony of the conspiracy upon which the American Federation of Labor as such could begin prosecution, attorneys were consulted, who advised that inasmuch as all of the original swindlers in this case, as well as other cases, were quarreling among themselves, it would be wisest to secure information from the various sources possible and use one against the other. This resulted in securing the letters, documents, receipts and forged checks, which I have mentioned.

While this was in progress, Henry Rice was employed as a solicitor for the Ohio Federation of Labor publication. He secured checks from the following firms and forged the name of the Ohio

Federation of Labor, cashed the checks and retained the money for his own use:

Altman Publishing Co., Mansfield, Ohio.....	\$50
Christy Knife Co., Fremont, O.....	15
George W. Harding, Lieut.-Gov. of Ohio.....	40
Star Iron Works, Lima, O.....	10
Norris, Christian Lime and Stone Company.....	25
Diestil Wemer, Lima, O.....	40
The Gem Shirt Co., Dayton, O.....	25
The Dayton Specialty Co., Dayton, O.....	20
Buckeye Varnish Co., Toledo, O.....	15
The World Co., Newark, O.....	25
The Hampton Watch Co.....	25

This evidence is also at your disposition. Since 1904, warrants have been out, issued by the authorities in Ohio for Rice for these crimes. Up to date they have been unable to serve the same upon Rice.

About this time Rice was also selling whiskey for a firm called the Firth Company, 252 Pearl Street, New York City. Mr. Firth, who was employed by the Trow Directory at 11th street and 3d avenue, was personally acquainted with Rice, who induced him while conducting his work in the printing shop of Trow's Directory to invest in whiskey, and pack it in a union box and place the union label thereon and call it a union whiskey. The same was named "The Right Label Whiskey." Mr. Firth invested his savings in this new enterprise, and Rice became its salesman. Many cases of this whiskey was sold. Rice collected for the same, retained the money and put the Firth Company out of business.

After ruining the Firth Company, Rice went to work for the Hamburger Company, 86 Michigan avenue, Chicago, Ill., and I desire here to quote from a letter of that company regarding Rice, under date of April 24, 1905:

"We took this opportunity to tell you that your report of Mr. Henry Rice is absolutely correct, only you did not say enough about him. This man absconded owing us quite a little money, and if you have heard of his whereabouts, you will confer a favor by advising us promptly."

The Hamburger Company was advised to secure a warrant for Rice, and under date of May 5, 1905, wrote as follows:

"In reference to Henry Rice, we at once took the matter up with our attorneys. We believe we shall follow the course indicated in your letter and have him indicted by the Grand Jury of this county."

There are two States from which Rice steers clear.

The Pennsylvania Federation of Labor at its second meeting insisted that no further souvenirs should be published in its name, but Rice still continued to collect money in the name of the Pennsylvania State Federation of Labor, even as late as January, 1904. In that year he fraudulently collected \$50.00 from Mr. Simon of the

Simon Silk Company, of Easton, Pa. The officers of the
938 Pennsylvania State Federation of Labor on or about May 7,
1904, sent a circular to all business people they could reach
in Pennsylvania, warning them against Rice, and also stating that
they did not authorize the use of their name for any books or pub-
lications of any character, or authorized anybody to solicit subscrip-
tions or donations in their name.

A number of further swindles of this character could be enu-
merated, but it is unnecessary to go further. Sufficient to say, that
as late as this fall he has swindled a number of business people in
the name of the Central Federated Union of New York, one of them
being the Brooklyn Eagle, of Brooklyn, N. Y.

From time to time my colleagues of the Executive Council, our
organizers and I lent whatever aid we could to the prosecution of
frauds who secured money whether in the name of the American
Federation of Labor or that of any other labor organization. We
succeeded in sending several swindlers to jail, among them:

George Martin,
Richard Cooney,
George Mackey,
James Donnelly.

There is at our instance at the present time a man by the name
of Reilly, in New York City under arrest, awaiting trial for the
fraudulent use of the name of the American Federation of Labor.

I have found by experience that the great difficulty in obtaining
the conviction of swindlers is that business men too often refuse to
give us their co-operation and support, even to act as witnesses,
much less to appear as complainants.

Now I want to call your attention to the fact that upon the testi-
mony of a creature such as Rice, of whose record I have given you
but just a faint outline rather than the actual full facts of his ras-
cality, the character of the men in the labor movement is sought
to be destroyed.

Let me call your attention to how careful I have tried to be in the
affairs of our Federation.

Of course it is necessary to issue credentials to the man selected
to solicit advertisements from business men. In the credential is
invariably stated that an interview is requested for the solicitor in
which the merits of the American Federationist may be set forth
as an advertising medium. I have a blank copy of one of these cre-
dentials in my hand. From it I quote the following: "Agents are
not authorized or allowed to accept payments of any kind. All
contracts should be upon the official blanks of the American Fed-
eration of Labor. All payments should be made by check to the
Secretary of the American Federation of Labor and mailed to this
(Washington) office direct." And it further says: "No donations
of any character are accepted." The credential is always signed by
Frank Morrison as Secretary and myself as President of the Ameri-
can Federation of Labor and the seal of the American Federation
of Labor attached. The contract for advertising in its printed form
is as follows:

Office of The American Federationist, 423-425 G Street N. W.,
Washington, D. C.

Samuel Gompers, Editor.

— 1907. Please insert — advertisement in the American Federationist (official organ, American Federation of Labor), to occupy the space of — for — for which — agree to pay the sum of — dollars, payable monthly after the first insertion. Remarks —
Name — — — — — Address — — — — —

Make all Remittances to Frank Morrison, Secretary of the American Federation of Labor, 423-425 G Street N. W., Washington, D. C., who is the only one authorized to receive payment on this Contract.

No verbal or Special Agreement Recognized Unless Expressed Herein.

Unless Copy for Advertisement is Furnished when Requested, Authority is Given to Insert Business Card.

I present this document to you to show that any solicitation for advertisements must be upon the merits of the "American Federationist" as an advertising medium.

At this time it may also be appropriate to say that the instruction to our advertising manager has been that no other publication bona fide in character, whether of an international union or a central body in any city or town, must be referred to except with respect, no matter what its position or its attitude. I know that that has been religiously followed.

And now what follows records the story of the deepest degradation and maliciousness on the part of the National Association of Manufacturers.

I went to New York on October 26, to have a conference with Vice-Presidents Duncan and Huber for the American Federation of Labor, and Messrs. Kirby, Hannahan and Spencer for the Structural Building Trades Alliance. On my return to Washington, October 29th, I called into my office Secretary Morrison and dictated the following to a stenographer:

About a month ago, September 28th, when I was leaving the Victoria Hotel, 27th St. and Broadway, 27th Street exit, New York, a man accosted me: "Hello, Mr. Gompers." I said, "Hello." We shook hands. He said: "You remember me; I was a newspaper man and met you on the platform at the immigration conference last year. My name is Brandenburg."

I told him I was sure I had seen him somewhere but could not locate him, and was pleased to see him again. He said:

"Mr. Gompers, I am now in the employ of the National Association of Manufacturers in their campaign against labor, and I am against you, but I have known you and known you favorably and like you, and I think you ought to get together with Mr. Van Cleave and come to a better understanding as to your contentions, and I am in a position to help."

I answered that our position toward the National Association of

Manufacturers was defensive; that I did not aim to attack the organization as such or Mr. Van Cleave as its president, but I was not going to permit him to make all sorts of attacks upon the labor movement without resenting them; that after all what our movement aimed to achieve was a better understanding with employers whether as individuals or associations, and, therefore, I was favorable to a conciliatory policy.

He said he thought an interview between Mr. Van Cleave and myself could be arranged some time. He said, however, that it would necessarily have to be between Mr. Van Cleave and myself alone. I said that we could discuss that matter some other time.

About seven o'clock that same evening I returned to the hotel to get some baggage when the porter in charge of the coatroom handed me a note with the remark that the gentleman said he should hand it to me as soon as I got in and that he was waiting for me in his room.

Opening the note I found it to be an unsigned request that he desired to see me upon a matter of importance and immediately in his room. I had already made other important engagements and consequently could not go to see him.

On September 30th I received another unsigned note from Mr. Brandenburg from New York, in which he referred to the uncompleted conversation with me, that he was passing through Washington, and requested me to go to Edgetfield, S. C., where he, Brandenburg, would go and expect my arrival within the next ten days, adding that there was nothing I could possibly do which "could have a more satisfactory result for all concerned."

On the same day, September 30th, I wrote him a letter saying that I would not hesitate to go to Edgetfield but my duties would not permit. I asked him whether it would not be possible for him to come here on his return trip to New York.

On Monday, October 14, I received a telegram dated October 12, from Salisbury, N. C., from Mr. Brandenburg saying that he would arrive in Washington Sunday morning and leave on the Pennsylvania road Pullman car Caliph. Inasmuch as the telegram reached me too late, I was unable to meet him. On Tuesday, October 15,

940 I wrote him stating these facts. I also wrote him that I would be at the Victoria Hotel, New York, October 26th, and that we might have an interview some time during that day or evening.

He wrote me a note dated October 17th, received October 19th, expressing his regret that he missed me as "matters are most critical," urging me to see him "this Saturday" (October 19th) instead of October 26th.

I replied to him that it was impossible as I had a number of conferences to attend in Chicago, that I would leave there on the 25th, reaching New York on the 26th.

On arrival at the Victoria Hotel, October 23th, I was handed a note from Mr. Brandenburg in which he said he had been to the hotel and left a note requesting me to call him up by telephone at his home, 71 Irving Place, telephone 1978 Grammercy.

Together with Mr. James Duncan and Mr. Wm. D. Huber, Vice-Presidents of the A. F. of L., I had an engagement to meet in conference with the representatives of the Structural Building Trades Alliance, Messrs. Kirby, Hannahan and Spencer, on the morning of the 26th. In preliminary conference with Mr. Duncan and Mr. Huber I called their attention to all of the foregoing in detail and asked their advice before I proceeded farther. They urged me to have a conference with Mr. Brandenburg, expressing the judgment that Mr. Brandenburg intended to give a piece of important news regarding the operations of the National Association of Manufacturers. Adjourning for lunch, I determined to postpone telephoning to Mr. Brandenburg at the address he gave, until the conference which primarily brought my colleagues and myself to New York was concluded. Between that time, however, another note was left in the office of the Victoria Hotel for me saying that he, Brandenburg, would phone again at either five, six or seven o'clock. About 5:30 while the following gentlemen were in the room, Messrs. Duncan, Huber, Kirby, Spencer and Hannahan, the telephone in the room rang and Mr. Kirby, who went to the phone told me that a gentleman named Brandenburg desired to speak to me. I told Mr. Kirby that inasmuch as we were so busily engaged and I had said I did not want to be interrupted by the telephone he would better advise Mr. Brandenburg that I expected to be free to talk in about half an hour.

I believe Mr. Kirby is in the hall. Is that statement correct?

Mr. KIRBY: That is true, Mr. Gompers.

About half an hour later he did call me up over the phone and I spoke to him. We arranged for him to meet me at the hotel in the lobby at 6:30 that evening. His persistent repetition that he wanted to see me alone rather aroused my suspicion so I at least made up my mind that others, if possible, should see him when he called and note his coming, his going and his manner. So I waited in the lobby of the hotel. With me were Mr. Duncan and Mr. Huber. The time passed for his arrival and I called him up by telephone. I was informed by a lady who said she was Mrs. Brandenburg that he was on his way and would be at the hotel to see me in a few minutes.

I returned to the group of gentlemen I have named in the lobby with me, and stood with my back turned to the clerk's desk so that anybody who would come in to accost me would have to do so with my back turned toward him, and in full view of those with whom I was conversing. While in that position Mr. Brandenburg tapped me on the shoulder. We greeted each other and he excused himself for a few minutes because he said he wanted to telephone about a matter. He returned in about ten minutes and I introduced him to Mr. Duncan, Mr. Huber, and several others. When I introduced him to Mr. Duncan, he turned to him and said: "Are you James Duncan?" Mr. Duncan answered in the affirmative. I excused myself to the gentlemen, and Mr. Brandenburg and I went to my room, Number 310. I asked him to take a seat. He said
941 that he preferred to talk to me while he was walking the room, and asked me to be seated. He began to talk with the

most pained expression upon his face. His features were drawn. I repeat as near as I can recollect his remarks and what few words I uttered during the interview. You will bear in mind that this was dictated two days after the transaction; it was not done today. I am sure, however, that a mere recital of it can convey but little of the full purport of his statement. However, it is as nearly accurate as my memory favors me. He said:

"The purpose of my coming to see you is of the utmost importance to us. I am in charge of a certain bureau of a department organized for the National Manufacturers' Association. The purpose of it is to expose the immorality and the dishonesty of the leaders in the labor movement and to make it public. We have gone into the records of every prominent man in the American Federation of Labor and we have affidavits of a number of men, executive officers of national unions who implicate you and others, showing the immoral lives you and they have lived. All this is gathered and most of it is in sworn statements.

"The time that you were ill at Little Rock, Arkansas, in 1895, the nature of your illness, is known, and it was reported to us that you had, expecting to die, made a statement, being a sort of a confession. My object in coming to you is to say that I want to save you. I want you to make a statement, something that would appear as if you had written it at that time, which would in no way cast any blame upon yourself, but would show a spirit of broad kindness to others whom you desired to save, a sort of a 'Thanatopsis.'"

He handed me a paper that he had prepared. I read it twice, and realizing that he endeavored to impress upon my mind his knowledge of my supposed guilt, it was with the greatest mental concentration that I was able to contain myself. However, for the purpose of disarming any suspicion on his part that I resented his statement and for the purpose of having him go on further, I said: "Well, I do not pretend to have been an angel."

I made this statement for its literal truth, he evidently accepting it as a part acquiescence in his insinuations. He then proceeded:

"As I say, I want to save you and while I do not want to express in specific financial terms what the National Association of Manufacturers is willing to do, yet I can guarantee that you will be financially safe for the balance of your life. All that you need to do is to give us the information which we want of the other men, and to give us the workings of the inner circle of your Council and the general labor movement.

"We do not want you to get out of the presidency of the Federation at the forthcoming convention, for the Manufacturers' Association does not like Duncan any more than they do you. They realize that if you were to get out now it would mean that he would be your successor; but in a month or two after your re-election at Norfolk, you can get out, and the publication of all of these matters in regard to the active men in the labor movement would destroy them, and they would have to get some nobody to be president, and then there would be little Federation left."

The fact that there was really no inner circle, and that I had no

information of any immoral or dishonest act on the part of the labor men of the labor movement, had nothing to do with my frame of mind; but I take it that my state of feelings and frame of mind can be better imagined than I can attempt to describe it.

At about this time Mr. Duncan, who was in the lobby of the hotel with the other gentlemen named, became impatient, and inasmuch as neither of us had partaken of any food since early in the day, he called me up over the 'phone from the lobby to my room and asked me whether I was coming down because he and the other friends wanted to go to supper. I told him I would be down in five minutes.

During these five minutes there was little said further than 942 the desire I expressed that I might be permitted to keep the typewritten document so that I could look it over; that I wanted to think the matter over and perhaps it would be better to have another interview. This was arranged to take place at 10:30 Sunday morning, October 27th, in my room at the Victoria Hotel.

When I met Mr. Duncan and Mr. Huber and one or two others in the lobby of the hotel, they expressed their surprise of how near I appeared to a nervous collapse.

I took out the typewritten document which Brandenburg had given me and without showing its face to him, I asked Mr. Duncan to put his initials on it with the date as a means of identification. He did so. I handed him my key and asked him to go at once to my room and gather up all of the papers that were on the dressing case and take them to his room. I was apprehensive. Mr. Duncan did so.

We then went to a nearby restaurant where they had dinner, but I could not eat with them. We took a walk up Broadway and returned to the hotel, when Mr. Duncan and Mr. Huber returned with me to my room so that I could recount to them what had transpired at the interview. The drawer of the table in my room was open. Mr. Duncan with an exclamation, said: "Sam, somebody has been in your room since I took those papers away. I went through that drawer thinking there might be some papers you had forgotten in there, but I closed it. Of that I am positive."

It was then agreed that I should pursue the same course in the next interview with Brandenburg, and to endeavor to find out the absolute accuracy as to whether he was authorized to act by Mr. Van Cleave of the National Association of Manufacturers.

The following morning, Mr. Huber asked one of the chambermaids doing duty in the hotel whether anybody had been into the room after we left. She answered in the affirmative, saying that the man in the brown suit of clothes and wearing glasses had been in my room.

On the following morning, Sunday, October 27th, Mr. Brandenburg met me in the lobby of the hotel. We went to my room. The promise of immunity from exposure and a guarantee of my financial future were repeated. Mr. Brandenburg stated that if I did not care to comply and sign the typewritten document he had prepared, that I might write something on a sheet of paper which would show age as having been written by me some twelve years ago in Little Rock that would be practically a nothing, that he was sent to Little Rock

to obtain a paper which was supposed to be in existence, but that in his investigation he found simply a memorandum in the papers of a lawyer who had since died which were meaningless and having no connection with me; that this was of no use, and that he wanted this statement purporting to have been written by me at the time which he could show to Mr. Van Cleave and others, that there was no foundation for the statement, and that this was in line of his policy to safeguard me.

I evaded the subject for a time with the statement that I realized the importance of the matter he had presented to me, but that I did not feel like giving a definite answer there and then; that after all, I had only a passing acquaintance with him, Brandenburg, and that while I had no doubt that he had authority to act, yet I would want to have more direct assurance. He answered:

"Do you mean that you want to see Mr. Van Cleave personally and get the assurance from him?"

I answered that I thought that was about the only way that I would feel warranted to act.

He answered that Mr. Van Cleave might suspect that this was a trap. For the purpose of allaying that suspicion, I answered: "So might I regard your proposition to me." He said:

"You know that I want to help you. The opposition is
943 against you particularly and against all others active in the labor movement, but I am desirous of saving you and having your service for us."

I quietly but firmly insisted upon an interview with Mr. Van Cleave as the only thing upon which I might give the matter further consideration. That I did not protest against his insinuations and propositions, he seemed to have accepted as my acquiescence and which evidently allayed his suspicions.

He said that he thought that Mr. Van Cleave was in New York City; that it was Sunday and it was difficult to get into communication with men who could let him know where to locate him, Mr. Van Cleave, but that he would advise me later; that if I could stay over in New York until Monday such an interview might be brought about, but he would let me know later in the day. We then parted.

I immediately repeated the conversation with Mr. Brandenburg to Mr. Duncan and Mr. Huber. About two hours later Mr. Brandenburg called upon me at the hotel, and because there were others, Mr. Duncan and Mr. Huber, in another room, adjacent to mine, he asked me over the 'phone from the lobby in the hotel to my room that I meet him in Room 318, on the same floor with my room. I was apprehensive for a moment, but concluded to go. However, I told Messrs. Duncan and Huber that I was going to that room.

I went to Room 318 and found Mr. Brandenburg there, and he told me that it was difficult to get the men over the phone, but that there were editors of some newspapers and magazines in New York, the New York Times, the New York Sun, McClure's and Everybody's and presidents of banks whose names he gave, but which I can not now recall, whom I could meet on the following day. I declined any and all of them unless I could meet Mr. Van Cleave himself, to

verify his (Brandenburg's) statement, I should not consider the matter further.

He said: "Well, I will arrange that Mr. Van Cleave will meet you in Washington."

In his effort to convince me that he was an authorized agent and representative of the National Association of Manufacturers he showed me vouchers and warrants and receipts for money paid to him as its agent. The warrants and vouchers and receipts were in printed forms of the Century Syndicate, No. 1 W. 34th Street, New York City, also printed thereon that it was a bureau or department of the National Association of Manufacturers.

Mr. Brandenburg was very insistent that I should let him have a written statement, as I have already stated. He said that unless he had it by the following day, Monday, it would be of no use to him. I told him that I could not then make him a promise to do so, but if I made up my mind to do so I would call him up over the phone at his home, 71 Irving Place, telephone 1978 Grammercy, and tell him. I did not call him up; I did not write it.

I immediately went to my room and there related to Mr. Duncan and Mr. Huber every detail of the statements made in the conference with Mr. Brandenburg.

Suspecting that Brandenburg might have given me a false address, one of our friends to whom I told the results of the interview of Brandenburg with me suggested that when he (Brandenburg) left the hotel he ought to be watched as to where he went. I asked two friends, George Murray and Thomas Guerin, of the United Brotherhood of Carpenters and Joiners, who were calling upon Mr. Huber, President of that organization, to follow Brandenburg wherever he might go. Mr. Guerin is a delegate to this Convention. They did so. He pursued a zigzag course and was seen to enter 71 Irving Place.

Is that true, Brother Guerin?

Delegate GUERIN: It is.

I had an investigation made and found that Brandenburg
944 did not register for election as having lived at 71 Irving Place.

The publication of the scurrilous and malicious attack in the National Association of Manufacturers' organ, the American Industries, followed a few days later, and it made it quite clearly apparent to me that the purpose Brandenburg had to secure from me some written statement was for its publication as a sort of recantation or confession in connection therewith. It is quite evident that it was for that reason that he stated that unless he had that letter from me by Monday morning it would be of no use to him.

The paper Brandenburg asked me to sign has never left my possession. It is as follows:

"So by devious ways I have come in view of the end of the period. Not far away is the final cessation of something mortal, that I know, but that mystery of the suspension of other things immortal must yet be made clear. Soon I shall stand where I shall see with unblinded eyes, and to that point must come every one no matter by

what path, and the realization of that fact palliates the bitterness with which I could contemplate my own course, were it not true.

"For I have struggled with the humblest on a plane of equality, and I have walked and talked with the mighty ones of the earth and have lent them my power. The poor cigarmaker's apprentice has lived to become the master of a million minds, and lived a little longer — be what he is today, not even a master of himself.

"There is nothing of the whine in this. Emptied, broken as I am, I have nothing to ask. Nothing I might achieve would matter in a little while, and this what I write is after all nothing more than my retrospective thoughts expressed through the accustomed medium of my pen. Wisdom is cumulative and out of my abundance I might endow posterity. Vengeance by the law of compensation overreaches the grave, and I might undo more men a score of times than will regret my passing. Justice is exquisitely elusive, and I might with a truth told here and there palliate many a grave miscarriage. But why? Why should I, having driven on to my own aims leave my now disabled chariot to retrace the hippodrome?

"Each man in his way, be it great or small, exists in an attitude toward the world at large, in a second attitude toward his immediate associates, and in a third and almost invariably different, very different, attitude before his own inner consciousness. Stripped of the sophistry that served as a mental lubricant when in activity, I stand at halt contemplating my own ego.

"I see lust of power that has triumphed again and again."

And there it abruptly stopped.

You will observe on the margin of the original typewritten document Brandenburg wanted me to sign, the initials of James Duncan and the date, each written by his own hand, and which I asked him to do immediately after the interview at which Mr. Brandenburg asked me to sign the paper when completed.

I have these documents here for the inspection of any delegate who wishes to see them.

I have, and herewith submit it to you for your examination, the notes, letters, card, scrap of paper which Brandenburg wrote or sent me, with the registered mark of the Victoria Hotel, showing the time of their receipt there; also the letters and the envelope sent by mail with the postoffice mark giving hour and date; also the telegram sent me by Brandenburg.

There is in my possession further information of the ramifications and machinations of the National Association of Manufacturers, their detective agencies, their auxiliary companies, and the reptile hirelings who are employed to assassinate the character of the men of labor and thereby hope to weaken or destroy the labor movement of our country. All that I now desire to add is that there is not a

scintilla of truth in anything published or which can be published by the National Association of Manufacturers or their hirelings which in any way can reflect upon the integrity, the morality or the honesty of myself, and I have an abiding faith they can not do so of any one member of the Executive

Council of the American Federation of Labor. I defy our enemies to do their worst.

At the conclusion of the statement the entire Convention arose and applauded President Gompers.

A handsome basket of roses and chrysanthemums was then presented to President Gompers on behalf of the delegation from the United Hatters of North America.

Vice-President DUNCAN: I want to remind President Gompers of one thing he has omitted to recount. This mysterious man, in addition to his information about the purpose of collecting alleged data about the characters of the men connected with the labor movement, added that if it could not be found he proposed to manufacture it. I say this because of its importance, and because in their papers they will continue to publish stuff purporting to be a record of the private lives of the men. The statement is important, because it was given to President Gompers with considerable emphasis.

President GOMPERS: It is true that statement was made. There is not a word in the statement I have made this afternoon that is not a conservative statement of the facts. It was made conservative in order that I might be absolutely within the truth. Realizing the importance of making the statement, I had a consultation with Vice-Presidents Duncan and Huber, and they asked me to write it down as soon as possible after I returned to Washington. In spite of that this very important statement was overlooked. Mr. Brandenburg said: "They are determined to destroy the men at the head of the labor movement, and particularly yourself, unless we can get you. We have men who have made affidavits, men you have trusted in the labor movement, who have been national officers and who have had your confidence. If the information we have or can find is insufficient, we have got the bureau that can and will manufacture it."

I could stand before you another hour and tell of these things. I could tell you of men whose names have been given who are in the employ of the labor organizations as business agents and officers who are also in the pay of the Farleys, the Farrells, and this Century Syndicate, all of them either agents of the National Manufacturers' Association, or auxiliaries and companies formed by it for the purpose of destroying the men in the labor movement. In all the history of the labor movement in any country on the face of the globe, in all the world, I do not believe that any coterie of the worst representatives of the capitalistic class have been so crueld, so brutal, so malignant and conscienceless as these Van Cleave hirelings have shown themselves to be.

Delegate BERGER: Mr. Chairman and Fellow Delegates: for some years past it has been my lot to come here and vote against the unanimous election of President Gompers. This year I promise to move to make his election unanimous. (Applause.)

I move a vote of confidence in President Gompers and the entire Executive Council. I move that everybody stand up.

The motion was seconded and carried by a unanimous rising vote, accompanied by three cheers for President Gompers.

On motion of Delegate Sullivan (T. J.), the statement made by President Gompers was made a part of the minutes of the Convention.

Delegate RYAN (W. D.): I desire the unanimous consent of the Convention to the introduction of a resolution. The resolution will not in any way prevent the Convention from going further in this matter if it sees fit. It only alludes to President Gompers, and has been prepared without his consent or knowledge.

Unanimous consent being given to the introduction of 946 the resolution, Delegate Ryan presented the following:

Resolution No. 183.—By Delegate W. D. Ryan, of the United Mine Workers of America:

Whereas, An organization known as the National Association of Manufacturers is attempting to destroy the rights and liberties attained by the Trades Union Movement for the American workman, under the guise that it is aiming to secure his individual freedom, and

Whereas, Upon repeated occasions during the recent past there has appeared in the daily press statements emanating from Mr. Van Cleave, President of the National Association of Manufacturers, in which he (Van Cleave) takes occasion to vilify and abuse Samuel Gompers, President of the American Federation of Labor, and in his zeal to crush the labor movement he challenges the integrity of one, who has been our intrepid leader for more than a quarter of a century, when henchmen of Mr. Van Cleave had failed to influence from his path of duty by the lustre of gold; therefore, be it

Resolved, by the 27th Annual Convention of the American Federation of Labor that the delegates herein assembled express their fullest confidence in the integrity, honesty and unfaltering courage of President Gompers. We herein give our unqualified endorsement to everything he has done and said, by pen, word and effort in advancing the cause of labor, by combating this un-American organization of manufacturers for which Mr. Van Cleave presumes to speak. Be it further

Resolved, That the course of the National Association of Manufacturers, under the administration of President Van Cleave, makes our duty clear. We have no quarrel with any organization of employers whose aim and purpose is to promote the industries of our country, and who seek amicable relations with labor. With such we are pleased to co-operate, but with the aforesaid Association, whose enmity is so apparent, we accept any challenge they may send. We will continue to organize and educate the American wage earners, fully protecting their liberties and securing for them economic conditions, long denied by the type of manufacturers and employers represented by Mr. Van Cleave.

Delegate HAYES (MAX): I think something is said in the resolution about the privileges obtained by labor in its struggle. I would suggest that the word "privileges" be stricken out and the word "rights" inserted.

Delegate RYAN: I accept the amendment.

The resolution was adopted by unanimous rising vote.

Delegate McNULTY: I do not desire to get up to verify anything President Gompers has said. I am one of the other fellows he referred to in his report. However, there is something of great importance that was not brought out. It has been brought to my attention and to the attention of other international officers that this Century Syndicate in New York City has in its employ men who are drawing salaries from labor organizations, who are at the same time in the pay of this Syndicate. I believe it would be for the best interests of the movement in general if President Gompers and those who have the information, if they do not deem it advisable to make it public here, will send it to the offices of the international organizations. The names of those men who are in the employ of the Century Syndicate as spies should be sent to all international officers. I do not want a man working under me who is in the employ of an employers' association; neither do I want to see men employed by other labor organizations who are employes of such an institution.

Delegate BARNES (J. M.): Unless there is more of the report, or matters of the same nature to be brought to our attention, I believe we should all agree that the greatest day's work of the American Federation has already been accomplished today, and that any other further action, or attempt to occupy our minds with other questions will be pale and insignificant in character. I therefore move that we adjourn.

The motion was seconded and carried, and the Convention was adjourned to 9 a. m., Thursday, November 21st.

947 "Of the scene that followed the reading of President Gompers' statement, the *Virginian Pilot*, a Norfolk daily paper, said:

"President Gompers' statement was all that he promised it would be and more. That his hearers deemed he was vindicated of all charges which have been made against him, was clearly in evidence by the demonstration which followed the statement.

"Delegates spontaneously rose to their feet, jumped on tables and chairs, threw their hats in the air and shouted and whooped for six long minutes without cessation. The convention went into a pandemonium of cheers and applause, while from some corner of the room came a great basket of flowers which were deposited on President Gompers' desk, bearing a card, 'From the Delegates of the American Federation of Labor of North America.'

"This token along with the warm and feeling ovation which was tendered Mr. Gompers, brought the tears to his eyes, and a suspicious cough and a sneeze were but a poor veil to hide the real emotion he felt."

"The New York World said:

"At the close of the speech there was a great demonstration, even Victor L. Berger, of Milwaukee, Socialistic opponent of Gompers, declaring that he would be the one this year to move to make his election unanimous with a vote of confidence. 'This,' declared Berger, 'is the answer of the Socialists to the Manufacturers' Association.'

"The New York Evening Journal said:

948 "Probably the greatest sensation ever witnessed upon the floor of a convention of the A. F. of L. marked the session of the ninth day of the present session. The delegates had been keyed up for this event since the beginning of the convention. It was known that President Gompers would reply to the attacks made upon himself and the Executive Council by the Manufacturers' Association. It was a great triumph for the leaders of labor and a complete repudiation of the charges made by Van Cleave, Post, Parry, and other enemies of the movement. Immediately after the passage of the vote of confidence the convention suspended its rules and adjourned."

"The Richmond (Va.) Journal said:

"By long odds the most sensational incident of yesterday's session of the A. F. of L. was a statement made by President Samuel Gompers, which disclosed the fact that an alleged attempt had been made in October to bribe him into a betrayal of the workingmen's cause."

"The disclosure came when Gompers made a speech replying to the attacks made on himself and other officers of the organization by the Manufacturers' Association. * * *

"What followed is hard to describe. The delegates became parties to a most notable demonstration. A motion offered by W. D. Ryan, of Springfield, Ill., representing the Illinois Mine Workers, voting to President Gompers complete confidence in his every act and deed and denouncing the Manufacturers' Association, received immediate consideration, and was adopted amid enthusiastic excitement."

949 *Report of Special Committee on the Portion of President Gompers' and Executive Council Reports Relating to the Unfair Buck's Stove and Range Injunction Suit.*

"The special committee to which was referred the portion of President Gompers' and the Executive Committee's report, dealing with the suit to enjoin publication of the unfair Buck's Stove and Range Company, reported as follows:

950 Your Special Committee, to which was referred the subject matter contained in the reports of President Gompers and of the Executive Council relative to the suit brought by J. W. Van Cleave, of the Buck Stove and Range Company, against the American Federation of Labor and its officers, and all matters in connection therewith, begs leave to report as follows:

We have given the reports, the evidence and all other matters in connection with the suit, our deliberate consideration. There is not the least doubt in our minds but that the suit in question, the scurrilous and scandalous campaign of villification against the officers of our great movement, the rampant antagonism of the worst elements of the capitalist class as manifested in Los Angeles and elsewhere, are all of them of a kind, leading up to and the result of the creation of the million and a half dollar War Fund by the Manufacturers' National Association—raised in the effort to weaken and

ultimately destroy the effectiveness of our great movement, our movement which protects and advances the interests of the toiling masses of our country against the greed and aggression of those who seek to profit if the toilers were rendered defenseless.

We have read with the deepest interest the fundamental principles involved in the Van Cleave suit as set forth in President Gompers' report, both under the caption dealing specifically with the suit and also in that part of the report dealing with the "injunction abuse." We venture to assert that in no document of a similar kind or in any treatise upon the subject have constitutional guarantees and inherent principles been set forth more clearly, logically and truly than in the President's report.

There is involved in the Van Cleave Buck Stove and Range Company suit against the A. F. of L. and its officers fundamental rights which strike at the very root of free institutions. The freedom of speech and the freedom of the press are involved; and, as President Gompers so ably and amply sets forth, there are involved the right of man's ownership of himself, his ownership of his labor power, of the wages he receives in return for the exchange of his labor power, and the use to which these wages may be devoted.

Freedom was never taken from a people by one attack. The process was and is gradual. It is the denial of the rights of one portion of the people at one time, the infringement upon the liberties of another portion at another time, that step by step make inroads into the citadel of freedom and undermine the entire structure.

So with the injunctive process as typified in the present suit. The attempt to deny to the men of labor the right of the freedom of speech and of the press should not only arouse the resentment of the great masses of our people, but it should appeal strongly to the newspapers and magazines of our time.

The freedom of the press implies not merely that one shall print and say the things that please. For such a purpose guarantees are entirely superfluous. The constitutional guarantees of the freedom of the press were designed to protect the dissidents, the opponents, in their right not only to protest but to make public that protest in speech and print, in an appeal to the people against existing power and conditions. In it are involved the guarantee of the right to say the things that displease, man being responsible for his utterances and never to be enjoined or prohibited from expressing himself.

The blow in this instance against labor and its official magazine, the American Federationist, may to-morrow in some form be directed against another publication, and though labor may be called upon to bear the brunt and make the contest in the present proceedings, we urge upon the press of our country the consideration of the principle of free speech and free press involved in these proceedings.

If the rights and the interests of the people are to be protected and defended against modern greed, avarice, chicanery and unlawful power, we can not, and we will not, surrender or yield the exercise of the liberty of speech, the liberty of the press.

We protest against and repudiate the theory, either expressed or

implied, that there exists any direct or indirect property right in workmen other than by the workmen themselves, and in defense of our position upon these great fundamental principles made sacred by history and traditions, we pledge our united efforts.

We commend the action thus far taken by the President and the Executive Council, in taking the necessary legal steps to maintain our Constitutional rights. Your committee believes it is of vital importance that this suit be fought to a successful termination, and, therefore, to raise an available fund for that purpose we recommend that this convention authorize the President and the Executive Council to issue a special assessment of one cent per capita, and that the President and the Executive Council aforesaid be further authorized to make such other and further assessments, should occasion require, as they in their judgment may deem necessary.

FRANK DUFFY, *Chairman*,
D. G. RAMSAY, *Secretary*,
JOHN P. FREY,
S. L. LANDERS,
JOHN T. SMITH,
JOHN A. MOFFITT,
EMMET T. FLOOD,
J. G. NOYES,
GEORGE FINGER,
W. D. MAHON,
JERE L. SULLIVAN,
JOHN FITZPATRICK.

Delegate RAMSAY: I move the adoption of the report.

The motion was seconded and carried by unanimous vote of the convention.

951 *President Gompers' Report on the Van Cleave Injunction Suit.*

"The following is from President Gompers' report to the Norfolk convention of the A. F. of L. on the subject of the Van Cleave injunction suit against the A. F. of L. to restrain it from publishing the unfair Buck's Stove and Range Company on the 'We Don't Patronize' list of the American Federationist.

The Buck's Stove and Range Co., of St. Louis, of which Mr. J. W. Van Cleave is president (and he is also president of the National Association of Manufacturers), brought suit against the American Federation of Labor, the members of its Executive Council, both officially and individually, and several other officers and members of unions attached to international unions affiliated to the American Federation of Labor. The papers in the suit of the Buck's stove and Range Company have been served upon us, and also a notice to show cause why a permanent injunction should not be issued against our publishing the company upon the "We Don't Patronize" list in the American Federationist. Inasmuch as this report

is written in advance of the day set for the hearing of this application for an injunction, November 8, the developments thereof will be incorporated in the report of the Executive Council. A résumé of some of the incidents leading to the present situation may be necessary for the proper understanding of our position.

The International Brotherhood of Foundry Employés and other organizations had an agreement with the Buck's Stove and Range Company, and some still have agreements, either directly or through an employers' association of which the Buck's Stove and Range Company is a part. In the case where the organization of labor was not so well fortified, the company antagonized it, assuming a hostile attitude with a view of crushing the union and imposing unfair conditions upon its members in the line of work which they performed.

A contest ensued and the organization in question declared the Buck's Stove and Range Company, of St. Louis, unfair. It appealed to all organized labor and its friends to transfer their patronage to other and fairer employers. A similar appeal was made to the American Federation of Labor, and, pursuing the usual course followed in cases of appeals of this character, I caused an investigation to be made and made further investigation myself, and had a representative of our Federation endeavor to bring about an honorable adjustment of the controversy between the organization primarily in interest and the company.

The fact developed that Mr. Van Cleave, the president of the company, was known to be so hostile to all organized labor that he violated the agreement he had for his company (through the employers' association, of which he was a member,) with an international union, and that it was only through the disciplinary power and measures of that employers' association that he for his company was required to conform to the agreement. In the case in point the International Brotherhood of Foundry Employés had no such advantageous position, and Mr. Van Cleave, for his company, exercised his antagonism to the fullest.

The investigation demonstrated clearly Mr. Van Cleave's hostile purpose toward the organization in question, and every effort at an amicable adjustment was fruitless. It was then that my colleagues and myself, the Executive Council, approved the position and action of the organization affected, and this fact was published in the American Federationist. The suit is brought to prevent this publication. It will determine our legal right not only in this instance but practically in all similar cases.

The Executive Council and the other defendants authorized me to retain competent counsel to defend our rights before the court. In arguing a preliminary motion before Judge Clabaugh, of the Supreme Court of the District of Columbia, the counsel for the Buck's Stove and Range Company substantially declared the following to be about the theory of its case:

That the American Federation of Labor and all its affiliated organizations, international, the locals of internationals, state federations, city central bodies, locals affiliated to them, all local branches

directly affiliated by charter, are engaged in one common purpose; that they find it inexpedient to become incorporated and are therefore bound to all the legal responsibilities appertaining to partners and partnership; that under this partnership the American Federation of Labor is legally responsible for the acts of a constituent body located at a distance and even though the officers of our Federation may know nothing whatever of the doings of the distant "partners," this partnership liability extends not merely to contract relations but to the tortious and wrongful acts of the individual members of all the organizations or branches enumerated.

Our counsel advise me that the idea of the counsel for the Buck's Stove and Range Co. is apparently that the American Federation of Labor and all of its constituent parts are running amuck in boycotting, and in this course any person, no matter how distantly associated with a "minor union," is responsible for all of its acts. Our counsel add: "To our minds this theory outlined by the complainant is absolutely untenable, and the fact that it is advanced indicates a want of solid ground upon which to rest the bill of complaint."

The taking of testimony will, I am informed, shortly begin.

Quite apart from the consideration of the absurdity of such a position, it would make the American Federation of Labor, as such, its executive officers, officially and individually, legally responsible for any action taken by any local union even though remotely related to the American Federation of Labor. Let me present some of the fundamental principles involved in the assertion of labor's rights.

The ownership of a free man is vested in himself alone. The only reason for the ownership of bondmen or slaves is the ownership of their labor power by their masters. Therefore, it follows that if free men's ownership of themselves involves their labor power, none but themselves are owners of their labor power. Hence, it is essential that the product of a free man is his own. If he by choice or by reason of his environment sells his labor power to another and is paid a wage in return therefor, this wage is his own. This proposition is so essentially true that it is the underlying idea upon which is based the entire structure of private property. To question or to attempt to destroy the principle enunciated, involves the entire structure of civilized society.

The free man's ownership of himself and his labor power implies that he may sell it to another or withhold it; that he may with others similarly situated sell their labor power or withhold it; that no man has even an implied property right in the labor of another; that free men may sell their labor power under stress of their needs, or they may withhold it to obtain more advantageous returns.

Labor power is not a product; it is a human power to produce. In its very nature it can not be regarded as a trust or a corporation, formed in restraint of trade. Any legislation or court construction dealing with the subject of organizations, corporations or trusts which curtail or corner the products of labor,

can have no true application to the association of free men in the disposition or withholding of their labor power.

The attempt to deny to free men, by injunction or other process, the right of association, the right to withhold their labor power or to induce others to withhold their labor power, whether these men be engaged in an industrial dispute with employers, or whether they be other workmen who have taken the places of those engaged in the original dispute, is an invasion of man's ownership of himself and of his labor power, and is a claim of some form of property right in the workmen who have taken the places of strikers, or men locked out.

If the ownership of free men is vested in them and in them alone, they have not only the right to withhold their labor power, but to induce others to make common cause with them, and to withhold theirs that the greatest advantage may accrue to all. It further follows that if free men may avail themselves of the lawful right of withholding their labor power, they have the right to do all lawful things in pursuit of that lawful purpose. And neither court injunctions nor other processes have any proper application to deny to free men these lawful, constitutional, natural and inherent rights.

In the disposition of the wages returned from the sale of labor power, man is also his own free agent. All things he may lawfully buy, he may also lawfully abstain from buying. He may purchase from whomsoever he will, or he may give his patronage to another. What he may do with his wages in the form of bestowing or withholding his patronage, he may lawfully agree with others to do.

No corporation or company has a vested interest in the patronage of a free man. If this be true, and its truth can not be controverted upon any basis in law, free men may bestow their patronage upon any one or withhold it, or bestow it upon another. And this, too, whether in the first instance the business concern is hostile or friendly. It is true for any good reason, and in the last analysis, for no reason at all.

It is not a question as to whether we like or dislike lockouts or strikes, boycotts or blacklists. The courts have declared that lockouts and the blacklists and all that pertain thereto are not unlawful. It is difficult to understand, then, unless there is some conception in the courts of an employer's property right in some form in the laborer or the laborer's patronage, how they stretch their authority, pervert the purpose of the law and undertake by the injunctive process to outlaw either the strike or the boycott.

To claim that what one man may lawfully do when done by two or more men becomes unlawful or criminal, is equal to asserting that nought and nought make two.

In the case in point, the suit brought against us by the Buck's Store and Range Company, another and exceedingly important feature is involved. It is a blow aimed at the freedom of speech, the freedom of assembly, the freedom of thought, and particularly the freedom of the press.

The constitution of the United States and the constitution of every state in the Union are in accord with it, in clearly justifying labor's contention.

The first amendment to the constitution of the United States provides that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The attempt to enjoin or prevent the publication of the "We Don't Patronize" list of the American Federation of Labor, whether by injunctive process or other judicial or legislative means, would be in direct violation of the constitutional guarantee and would indeed abridge free speech and a free press. In all the land there is neither law nor power to enforce such a decree.

A case in point was brought to the highest courts of Missouri. The constitution of that state provides that "no law shall be passed impairing the freedom of speech; that every person shall be free to say, write or publish whatever he will upon any subject, being responsible for all abuse of that liberty."

The Mark and Haas Jeans Clothing Company *vs.* Watson et al. March, 1902. Watson and others represented the United Garment Workers of America which issued a circular asking the public not to deal with that house or with other houses using the company's brand of clothing. The company sought an injunction to prohibit the promulgation of the circular. The circuit court denied the writ, the defense being the constitutional right of freedom of speech and of the press. Upon appeal the higher courts in Missouri sustained that contention, and held that the idea underlying the constitutional

953 guarantee was punishment, not prevention; that if prevention exists, then there can no opportunity possibly arise for one to become responsible for saying, writing or publishing anything he may desire upon any question. The constitution, in forbidding laws impairing the right of free speech, recognized that right as pre-existent, and forbids legislation impairing that freedom. There is no exception thereto; the proscription is affirmative. The Missouri case to which I have already referred is so important that it deserves further recounting here.

The court took up the argument that an injunction should be issued because the firm could not collect damages from the authors of the circular. The court pointed out that in the case of *Association vs. Boogher* (3 Mo. App., 173), it was decided that a libel can not be enjoined because owing to the insolvency of the libeler the victim could not recover damages for the libel. For if the remedy of injunction be given because of insolvency of the defendant, the freedom to speak and write which is secured by the state to all its citizens would be enjoyed by a man able to respond in damages to a civil action, and denied to one who has no property liable to execution. The court said there is no power to suspend the right for a moment or for any purpose. There is no instrumentality to limit or to restrict the right, except fear of the penalty, civil or criminal, which may wait on abuse. Only licentious abuse of free speech can be punished by law. No law can abridge the right of free speech. Wherever the authority of injunction begins, there the right of free

speech, free writing, free publication, ends. No half-way house exists between absolute prevention and absolute freedom. The right can neither be impaired by the legislature nor hampered nor denied by the courts. That a man has no means, that he can not be mulcted in damages for his speech or writings, matters not. The impecunious man has the same right as the wealthy. The exercise of the right of free speech is as free and unrestricted as if no civil recovery could be had or punishment inflicted because of its unwarranted exercise. The fact that the publication does an actionable injury does not go a hair toward a diminution of the right of free speech, for the exercise of which, if resulting in an injury, the constitution makes the speaker or publisher expressly responsible. Such responsibility is utterly incompatible with authority in a court of equity to prevent such responsibility from occurring. William Marion Reedy recently declared that labor can not be enjoined from continuing the publication of the list of "unfair" employers. Discussing the Van Cleave suit against us, he said: "The law as to the matter stands the same under the national constitution as under the state constitutions. Free speech and free publication are too sacred things to be thrown overboard at the request of the National Association of Manufacturers, or if not thrown over, reduced to such meaninglessness as now attaches to the workingman's so-called 'freedom of contract.'"

The rights laid down by the court in this case support in every regard the contentions of organized labor, and we propose to contend for our rights upon the ground of the freedom of speech, the freedom of the press in the case of the so-called boycotts and the right of man's ownership of himself, of his labor power, to sell it or to withhold it, and to do all lawful things in furtherance of his interests, whether done singly or collectively, in case of lockouts, strikes or boycotts.

954 From Report of Executive Council of A. F. of L. to Norfolk Convention.

You have already been made acquainted with the fact that the Buck's Stove and Range Company has brought suit against the Executive Council of the American Federation of Labor and officers of other affiliated organizations both in their official and individual capacity. The president of the company is Mr. Van Cleave, who is also president of the National Association of Manufacturers, and vice-president of the so-called Citizens' Alliance and other organizations whose main mission seems to be the effort to crush out the only defensive organization of the working people, the trade unions, local, national and international and federated into the A. F. of L. In connection with the suit Mr. Van Cleave for his company has secured an order from Justice Clabaugh of the supreme court of the District of Columbia for us to show cause why an injunction should not be issued restraining us from publishing the Buck's Stove and Range Company upon the "We Don't Patronize" list of the American Federation of Labor and to enjoin all labor organizations or labor men from doing anything or saying anything whether orally or in

print in furtherance of the purpose to secure better recognition by the company referred to for a satisfactory adjustment of existing disputes between the union particularly in interest and the company.

Owing to the fact that the officers, party to the suit, have been so much engrossed with their ordinary official duty, as well as their work in preparation for this Convention, and the Convention itself, our counsel on last Friday asked for a continuance, that is, a postponement on the hearing upon the proceedings to show cause why an injunction should not be issued until the close of the Convention. The case was formerly before Chief Justice Clabaugh of the Supreme Court of the District of Columbia. It is now before Justice Gould of that court. The latter granted a continuance, but only until Thursday morning, November 14th.

The National Association of Manufacturers at its last convention created a War Fund of a million and a half dollars to carry on a campaign of destruction of the organizations of labor. It has hired Pinkerton and other agencies and formed auxiliary associations, the purposes of which are not only to harass the men of labor in litigation but also to create suspicion of wrong-doing. It is the apparent purpose to assassinate the character of the men who have the confidence and respect of the great rank and file of labor, not only of labor but of the great masses of our people. Until recently the Pinkertons were exclusively engaged in prying upon the men in the local organizations. To create discord, to provoke premature contest in order to render themselves of some apparent value to their employers, the Van Cleaves, Posts and others, they had no hesitancy in making false reports as to the doings of the members of local organized labor.

The attacks upon the local men and upon the local organizations having proven fruitless, they now turn their attention to the men at the head of the labor organizations of the country. In the effort to crush out organized labor, the Van Cleaves have found the spirit of unionism and solidarity is too deep-seated in the hearts and minds of the trade unionists of America for them to succeed. They know that the men entrusted with the leadership of the labor movement throughout our country have aided materially in guiding aright the organized wage-earners. They now think that if they can destroy the confidence of the great rank and file of our movement, in the men at the head of that movement that the organizations of labor will thereby be weakened and become destroyed. They are evidently laughing in anticipated glee that the working men of our
955 country will then be at the tender mercies of the worst and most greedy elements of the entire capitalist class.

We have during our whole lives as have a very large number of the other active men in the labor movement, conscientiously endeavored to the very best of our ability and with single-minded purpose to aid our fellow workers to protect and promote their interests. Honesty and honor have been our guides in dealing not only with the affairs of labor but with all matters of our work-a-day lives. We assert without equivocation that there is not one scintilla of truth in anything which may be either charged or insinuated that reflects

discredit, dishonor or dishonesty upon the members and the officers of our great labor movement and that as our well-known bitter antagonists have failed in their attacks upon our local labor movement, their purpose to discredit and destroy the more conspicuous men of our movement will be equally abortive. You know the animus and the purpose of these attacks and you will, we are confident, treat them with the contempt they so richly deserve.

The suit by Mr. Van Cleave of the Bucks' Stove and Range Company against our movement is to deprive us of the rights to which we are entitled, the right of free association, free speech, and the freedom of the press, and with all the power which wealth gives our opponents, the exercise of all that power to antagonize our laudable movement and its purposes, they would invoke the aid of the courts and seek to persuade the perversion of law to render futile the lawful and proper means to protect the working people of our country from tyranny, greed and injustices. The full statement of the case and the principles and results involved in this suit of Mr. Van Cleave of the Buck's Stove and Range Company are fully covered in the report of President Gompers to this Convention.

Attention has frequently been called to the efforts made by labor's opponents to entangle us in interminable litigation with the twofold purpose of diverting our attention from the necessary work which the officers in the labor movement are required to perform, and also to compel us to large expenditures in defense.

The revenue of the American Federation of Labor is exceedingly meagre accruing from a per capita tax of one-half of a cent per member per month; in other words, six cents per year. With all the organizing and other educational and effective work, there are no funds at our disposal for proper defense, and we, therefore, recommend that this Convention provide the ways and means by which such funds may be created as are necessary and essential, in the defense of this suit.

We also recommend that this subject matter referred to a special committee to report to this Convention at the earliest possible date.

Contemptible Capitalist Antagonism—It Will Not Avail.

It is well known that in many instances there are employers and employers' associations with which the unions of labor live in terms of peace and agreement. Employers' organizations of such an intelligent character are not only welcome but should be encouraged. With organized labor they can not only work toward the maintenance of industrial peace, and the minimizing of industrial conflicts with the attending cessation of industry and commerce, but by their combined efforts constantly render themselves more independent from the trickery and machinations of the so-called princes of finance.

When, in 1895, the National Association of Manufacturers was formed it had a defensible purpose to serve, that of promoting trade, commerce and markets and the elimination of restrictions and barriers. With the advent of Mr. Parry as its president it was first covertly and then openly diverted from its original purpose and be-

came an avowed union-crushing institution. He and his successor, Mr. Post, utilized every available means to carry out the new policy of union-baiting, union-mashing. Finding the citadel of unionism firmly entrenched in the hearts and minds of the workers, they were repulsed at every step and in their every move.

And now, a new Roland has come upon the field in the personage of their successor, Mr. Van Cleave. He would not only follow the old line, but strike out for a new one. He recommended to his last convention, which adopted the proposition, that a War Fund of a million and a half dollars should be raised which is to be devoted to what was euphoniously declared "educational" purposes. It was not difficult to discern, and circumstances since have demonstrated, that this fund is to be devoted to the effort to weaken, cripple, and destroy the unions of labor; the unions which are the only means of defense of the workers from the cupidity and greed of the worst elements of the capitalist class; the only means by which the working people, the wealth producers of our country and our time, can hope to secure some of the advantages of advancing civilization, participate in the progress and become larger sharers of the wealth which they produce.

956 I am reliably informed that not less than twelve thousand secret detective agents of the Pinkerton and other companies are constantly in the pay of the manufacturers' associations to spy upon and misrepresent the doings of labor. Are these hireling character assassins to be the principal beneficiaries of the million and a half dollar War Fund, and is the fund to be further devoted to suits at law against organized labor so as to engage our organizations and our men in defensive litigation and to divert us from the imminent and important work to which we should devote our time and whatever ability with which we may be possessed? Surely, recent events justify an affirmative answer.

It is quite true that the make-up of the manufacturers' associations is not only of a comparatively small class of employers of our country, but it is also true that many of its members are out of touch and sympathy with the policy of the Van Cleave, Post, and Parrys. Several resignations from membership have recently occurred, employers sending to me copies of their letters of resignation and protest. Yet what they lack in membership and calibre, they endeavor to make up by attracting to themselves public attention. And for this reason, and this alone, do they receive any consideration at our hands.

It is now generally recognized that the labor movement is the necessary and inevitable outgrowth of industrial conditions; that it was quite as much the impelling force of circumstances as desire which brought the labor movement into existence. The toilers have recognized that the advantages they now enjoy over previous periods were not brought to them upon a silver platter or philanthropically conceded to them.

Even our worst antagonists concede that the organizations of labor have done much to improve the conditions of the workers. If this be true, and it is true, then to the unions of labor belongs at least that much credit. The question naturally arises, if the work of union

labor in the past has been of a beneficent character, in what regard is the labor movement of today more at fault than that very movement which has brought this betterment which even our most bitter antagonists concede.

Surely, none can truthfully assert that the labor movement of today is less intelligent, less humane, less lawful, than formerly. In truth, the observer must concede the reverse.

The sum total of labor's offending today lies in the fact that by our larger membership and increased intelligence our movement has become more effective in gaining for our fellow-workers the rights to which they are justly entitled, the elimination of the wrongs which they have too long borne and the bright prospect for the fulfillment of their high hopes and aspirations in the interests of humanity.

There is nothing for which our movement may declare, there is no action which it may take of an effective character to protect and promote the interests of labor, which will meet with the approval of labor's opponents. Only after success has attended our efforts and some of our demands are established and in full operation, whether this be by law or by agreement with employers, and the beneficence of these measures generally recognized, will the clamor of ignorance, greed and bigotry be silenced. This has been demonstrated in the past; the future will justify labor's present contention.

It has been truly said that the demands of labor are usually made ten or twenty years in advance of their general acquiescence and approval. If labor but goes on in the even tenor of its way, organizing our fellow-workers, securing for them more time and leisure and opportunity for their education and the cultivation of the best that is in them, pressing home upon modern society the rightful claims which are ours, we shall not only improve public opinion, and more largely our-elves constitute that public opinion, but we shall achieve for ourselves and for all posterity that real freedom, justice, progress and humanity of which poets have sung, philosophers have dreamed, and for which labor in all time has struggled, and which it is the mission of labor now and in the near future to establish.

957 The circular of November 29th, republished in the January Federationist was sent out, in which the Executive Council, in accordance with the action of the convention, levied an assessment of one cent to raise a fund to defend the rights of labor in this suit, and also the levying of another cent to counteract the vicious effort the committee of the National Association of Manufacturers' and Citizens' Alliance were making in the way of an attack upon our fellow unionists at Los Angeles and other parts of the Pacific Coast. It could not be published in the December number because on November 29th, the December number was out. It was not sent out for any purpose except to obtain the assessment needed to protect the Federation in the pending proceedings. It is customary, usually, when there is a circular sent out for an assessment and an appeal, to publish it in the next Federationist. The next issue of the Federationist that it could possibly go in was January. The December issue, on the 29th of November, was already out and in the mails. Witness has no knowledge that Mr. Gompers after

December 23, 1907, ever reported to the Executive Council the taking of any step in furtherance of or in relation to the so-called boycott against the Buck's Stove & Range Company. His recollection from the other reports is that after December 23rd, the reports made by Mr. Gompers related to anything except the progress of the pending Stove Company litigation.

(Page 2044.) There can be a strike without a boycott, and the men would stay out until such time, through agreement, the strike was settled and the men returned to work. There could be a boycott on a company that was employing, say, non-union moulders,

and the moulders could keep their boycott on until such time as an agreement might be reached whereby a collective bargain was arranged between the employes and the moulders, when the employes became part of the organization, or where it was agreed that there was no objection to the employes becoming members of the union. In the Stove Company, for instance, there was a strike against going back to longer hours, and the men quit and other men were employed and the strike continued, up until the time that it was settled by a conference between the present management and the representatives of the international organizations, whereby an understanding was reached that certain men would return to work, and he believes, did return to work, and the prevailing rate of wages should be paid, and no discrimination should be had against union men. The Buck's Stove & Range Company, upon the evidence submitted, had refused to hire union men. The organization in interest can do anything they like. They can abandon at any time. They might be compelled to abandon it, as was the case in the Buck's Stove & Range Company matter, when the officers of the Federation were enjoined from doing anything to aid and abet the boycott on the Buck's Stove & Range Company.

As a general proposition a strike precedes the boycott, but not always, because there may not be any union men working in the establishment. Witness thinks he saw some record today or yesterday in looking over the Federationist; that it was about July, 1910, when an adjustment of difficulties and the settlement of the strike took place.

(Page 2045.) Witness as a citizen owes his allegiance to the government of the United States; as a printer to the International Typographical Union, and as a member of a christian denomination, he owes his allegiance to the Congregational Church.

Witness says that when the obligation was sprung upon him—it is not an oath, but the obligation of the International Typographical Union—he was very much surprised and during the discussion was confused as to the word "allegiance", the more so because his Honor stated, as witness understood, that the word "allegiance" has a meaning well understood. Witness realized that a lawyer did not draw up the obligation, and could not understand where the word "allegiance" would create the impression in the minds of anyone that in taking that obligation, they were doing anything that was improper. Does not understand just exactly what the Committee was trying to

reach in regard to it, except it was he had taken an obligation that was superior to his obligation to the United States.

Webster says:

"Allegiance—the tie or obligation, implied or expressed which a subject owes to his sovereign or government; the duty of fidelity to one's King, government or state.

"2. Devotion; loyalty; as allegiance to science.

"Synonyms: Loyalty, fealty. Allegiance, Loyalty. These words agree in expressing the general idea of fidelity and attachment to the powers that be." Allegiance is an obligation to a ruling power. Loyalty is a feeling or sentiment towards such power. Allegiance

may exist under any form of government, and in a Republic, we generally speak of allegiance to the government, to the state, etc. In well conducted Monarchies, loyalty is a warm-hearted feeling of fidelity and obedience to the sovereign. It is personal in its nature; and hence we speak of the loyalty of a wife to her husband, not of her allegiance. In cases where we personify, loyalty is more commonly the word used; as, loyalty to the constitution; loyalty to the cause of virtue; loyalty to truth and religion, etc."

The Century gives the following:

"The tie or obligation of a subject or citizen to his sovereign or government; the duty of fidelity to a king, government or state. Every citizen owes allegiance to the government under which he is born. Natural or implied allegiance to that obligation which one owes to the nation of which he is a natural born citizen or subject as long as he remains such and it does not arise from any express promise. Express allegiance is that obligation which proceeds from an express promise or oath of fidelity. Local or temporary allegiance is due from an alien to the government or state under or in which he resides. In the United States, the paramount allegiance of a citizen has been decided to be due to the general government of the particular state in which he is domiciled."

Again Jefferson:

"It being a certain position in law that allegiance and protection are reciprocal, the one ceasing when the other is withdrawn.

That is from Jeffer's Autobiography page 12.

The WITNESS: "Observance of obligation in general; fidelity to any person or thing; devotion."

The New English Dictionary, 1884-1888, says:

961 "1. The relation of a liege lord; lordship;

"2. The relation or duties of a liege—man to his liege lord; the tie or obligation of a subject to his sovereign or government.

"3. The recognition of the claims which anything has to our respect and duty."

Witness should judge that second of Webster's "Devotion, loyalty, as allegiance to science", and the third in the New English Dictionary, "The recognition of the claims which anything has to our respect and duty," would probably justify the using of that word in that obligation, which was not put in for any other purpose than to prevent the formation of secret societies for the purpose of inter-

fering with the members of the international organization in the election of officers and in the matter of legislation and of situations.

The term "political organizations" used in that connection in the oath refers to Democratic and Republican and Prohibition and Socialist. Printers have nothing to do with them other than to have their choice of candidates and vote for them, and for the party they believe will best subserve their interests.

962

EVENING SESSION, FRIDAY, *February 16, 1912.*

(Page 2051.) Redirect examination of FRANK MORRISON resumed.

The purpose of referring so-called boycott resolutions to the Executive Council was for it to make an investigation to find out whether there is a grievance a justifiable grievance, to see if they could bring about an adjustment and thus prevent the boycott—avoid the necessity of approving the boycott.

So far as witness recollects that was the Constitution and was adhered to closely. The result would be the adjusting of the difficulty, if possible, thus avoiding any industrial warfare. If the difficulty could not be adjusted, notice was placed in the Federationist that an attempt had been made to secure settlement and adjust the differences, and failed, and, therefore, the name was published as being unfair to organized labor, and the next month it would be placed on the "We Don't Patronize" list, if it was not placed on that month. Probably simultaneously it went on both the "We Don't Patronize" list, with the special notice that is signed by President Gompers. Beyond this the A. F. of L. did no further boycotts at any time. That was the extent; that was the machinery that they had for approving the grievances of their affiliated unions. Has no recollection that the A. F. of L. ever initiated any boycotts. Under their machinery he did not see how they could, because the boycott must be a grievance of the members, and that means that they must belong to some union, and that union would have to be affiliated directly to the American Federation of Labor or with an international organization, so that it really originated in the local union of the city where the company or firm would be located.

(Page 2053.) Witness submits the following abstract of moneys received and expended for defense purposes.

1908.....	\$15,665.70
1909.....	852.54
1910.....	55.80
1911.....	19.06

Expenses paid out of that fund were as follows:

1908.....	\$11,058.57
1909.....	5,045.68
1910.....	415.46
1911.....	70.79

The total receipts up to October 1st, 1911, were \$16,593.10; total expenses \$16,590.49.

On the appeal for appropriations in 1908, there was received \$11,822.26;

1909.....	\$11,822.26
1909.....	40,891.34
1910.....	3,934.35
1911.....

Paid out of that fund as follows:

1908.....	\$8,415.62
1909.....	6,273.61
1910.....	7,934.01
1911.....	11,594.17

Total.....\$34,217.41

The total receipts from the one cent assessment and the appeals were \$73,241.05; total expenses \$50,807.90; leaving a balance 964 on October 1, 1911, of \$22,433.15.

That is made up of balance in the one cent assessment of \$2.61, and a balance of \$22,430.54 in the appeal for appropriations. That is up to and including the 30th day of September, 1911. Anything that has been paid out or received since that is not included.

Recross-examination of FRANK MORRISON:

(Page 2056.) The statement at the bottom of page 29 of the January, 1908, Federationist:

"Tell your wives and friends all about the Van Cleave \$1,500,000-war fund and the use to which it is being put,"

was put in there as a matter of information to the members of the union. Witness did not put it in there for the purpose of continuing the war upon the Buck's Stove & Range Company's goods, because so far as the officers of the Federation were concerned, they had taken the name off. It was simply a matter of information. They felt very keenly that a million and a half dollars should be raised for the purpose of crushing organized labor. It was an editorial comment, as he viewed it, in regard to the antagonism of Van Cleave and the Manufacturers' Association, with their million and a half fund which Mr. Van Cleave, under oath, admitted that they had arranged to raise.

It is witness's information that that sum was to be raised. It was published in the papers and commented on. Witness did not write the editorial; did not see it even. So far as he viewed it, it was for the purpose of conveying information. In the matter of these small comments, one — them in the newspapers, and there 965 are lots of them that are not appreciated, particularly by those to whom they are direct. It is an editorial; it is a

comment. It is a statement, and it is the idea of the editor. These mild statements made by labor organizations are nothing in comparison to the fierce attack and onslaught made not only on the men of labor, but on the officers in every way possible, and made by men whose intelligence and whose knowledge is superior, through being born under circumstances that permitted them to receive university educations. In other words, the men of labor and their officers have arrayed against them the best intelligence, the best talent, the ablest men that money can procure in this country and back of that they have the funds with which to pay those men; while the labor representatives have to depend on contributions and small assessments to raise money to protect them. What witness is trying to say and his answer intended to convey, was the fact that there is a warfare on between the Manufacturers' Association and organized labor. The Manufacturers Association, with Mr. Kirby at the head today, proposes to crush organized labor, and in his speeches and his articles he is attacking it. Four years ago the Manufacturers' Association was in existence, with an able leader and splendid counsel. Witness does not know and cannot conceive what was in the mind of another man when he reads an editorial. He gathers his own conclusions as to what it means, but the respondents have been trying to give to the members of organized labor and their families the knowledge of the effort that is made to crush the unions, and the wives and children are interested, because if the union is crushed, it means longer hours and poorer wages, and thus depriving the children of opportunity of better education.

966 (Page 2062.) Witness's attention is called to a notice on page 38 of the January, 1908, Federationist, offering sale of the Federationist for 1907, bound in two volumes, and of the official printed proceedings of the Norfolk Convention, and that the printed index of the 1907 American Federationist may be had without charge, and says that he did not put the notice in there. Did not know they were in there, so far as he recollects, though it is the usual custom, he thinks, for these notices to be in. Does not deny it is in there; that each year there is a notice put in.

Witness is asked why the regular official notice, having been sent to every union in November, 1907, in pursuance to the action of the convention, it was necessary in the January number of the Federationist to put in this statement, to re-publish that official circular which has done its work, and says that the notice went to the secretaries of 120 internationals and the secretaries of local unions, about 600, and it was the practice of President Gompers to always publish any notice of that character in the Federationist following the time that the notice was issued. The date was the 29th which was after the December Federationist was out, and the next Federationist, of course, would be the January number. The circular was sent to the local unions chartered by the A. F. of L., but not to those who composed the international unions. The original circular notice was sent to 120 internationals, or whatever number of internationals were affiliated at that time; to some 500 or 600 local unions directly

affiliated. Those were the only ones from which an assessment could be collected, and it was two assessments, one for the legal defense of the case, and the other to assist the Metal Workers which were on strike at Los Angeles and Seattle, and where it was claimed that the Manufacturers' Associations were engaged in an effort to destroy labor organizations on the coast, and are still at active warfare along that line just now, to drive out the unions and establish their conditions, or to prevent them from securing the conditions they wanted.

It was the usual custom to print all these notices in the next Federationist. The Denver Convention in 1908, met on the 9th and to the 21st inclusive. Does not recollect how soon he returned to Washington after that. Usually stayed several days afterwards to get out the minutes, and then it takes two and a half to three days to come. If he left within three days, did not stop off at Chicago, would think he would be back in six or eight days from the date of the convention adjourning. That might be the 27th, 28th or 29th, in there some place. There was a reception tendered witness when he came back from some place. He does not remember where it was from. He attended the reception at the Typographical Temple along with O'Connell and Gompers. Thinks that O'Connell made an address. He made a few remarks. Was there when Gompers made an address. It would appear that at that time Judge Wright had under advisement his decision in the former contempt proceedings.

Witness's attention is called to the following on page 52 of the January, 1909, Federationist.

"The argument in the contempt proceedings against John Mitchell, Frank Morrison and Samuel Gompers to show cause why they should not be punished for violation of the Van Cleave Buck Stove and Range Company's injunction, closed November 16th. Justice Wright reserved his decision. Up to this writing, December 15th, the decision has not been rendered. In connection therewith, the attention of our readers is directed to a letter from our attorneys, Ralston and Siddons, published in another part of this issue."

Witness's attention is called to the following said by Mr. Gompers: "We have been called upon to show cause why we should not be sent to jail, and I could not show cause. The things I have been charged with, I did. I have not denied them. I have discussed them on the platform, as I discussed them here. I have written circulars about them. Secretary Morrison sent them out, and I ask you now to place yourself in my position. What would you do?"

Witness says he cannot say that he remembers it. To the best of his recollection remembers his mentioning Secretary Morrison sending them out. Remembers his saying "We have been called upon to show cause." Has an indistinct recollection of that; that is about all he remembers. Thinks he recollects that in his talk, he made a statement of that kind. That is about all he can recollect. Witness had nothing to say about it. Does not recollect very much about what was said. It is one of those speeches that is made the

same as after dinner speeches and speeches made at a banquet. There was only a certain amount of attention paid to it. It did not make a very deep impression.

Redirect examination.

By Mr. RALSTON:

(Page 2078.) Witness does not know what caused the reference to be made in the editorial to which his attention was directed by Mr. Davenport, to Mr. Van Cleave's "reptile hirelings." Would take it that Mr. Gompers was smarting under a vicious attack made, he thinks, in the Manufacturers' magazine. Does not know whether the Manufacturers' Association employed detectives to watch him and others. Never gave it any concern.

969

FEBRUARY 27, 1912.

WILLIAM SULZER, on behalf of respondents, was called as a witness and examined by Mr. Ralston.

(Page 2083.) Is a member of Congress from New York City. Made the speech in the House of Representatives on March 17, 1908, included in the pamphlet entitled "Labor Organizations must not be outlawed." The editorials attached were taken from the American Federationist, and incorporated in the speech. Regularly received the Federationist, and has been receiving it for many years past. The respondents in this case did not call witness's attention to the editorials, nor did they, or any official or person connected with the Federation, request that those editorials be reprinted as a part of the speech, or in any other manner, nor did any other person make such request. The editorials were made a part of his speech absolutely on his own motion.

Cross-examination.

By Mr. DAVENPORT:

(Page 2084.) Witness thinks that his attention was first directed to this matter last week, or several days ago. That was the first time in four years since he delivered the speech, that his attention was called to it. Does not keep any diary. Is positive nobody called his attention to it, or desired to have the editorial and other matter inserted in a speech to be delivered by him, because he has a very good memory as to how he makes speeches and why and where. Witness's best judgment is that he thought on the 17th of March, 1908, that this was a matter of sufficient moment to call to the attention of the people. He got the floor, made the speech, and put the data in the record. Makes speeches when the spirit moves

970 him, when he can get the time and recognition of the House.

Received the Federationist of March, 1908, in due course. Supposes he did not have an opportunity to read it, and the spirit did not move him to make the speech until March 17, 1908. The making of the speech had no connection with the meeting of the Executive Council, held on the 17th, and the protest conference

called for the purpose of instituting a campaign. His recollection is clear about that. Is positive. By getting the document inserted in the record, every portion of it became frankable, not only the speech, but the editorial, and could be sent out as matter under the frank of a Congressman. Does not know that 30,000 copies were obtained from the Government Printing Office, and sent out under frank. Regrets more were not sent out. Knew nothing about the sending of the editorial. Read the editorial before he had it inserted. Read the decision of the court, and all the other matter and had it inserted. Thought at the time it was of sufficient moment to be given publicity, and wanted to have it go before the people of the country, so they would be able to read and understand it. Is talking about the whole matter in that speech. Is a lawyer and put the matter into the Congressional Record because he thought it was a matter of public moment. The decision of the United States Supreme Court is one thing; the comment on it by the President of the A. F. of L. is another thing. Thought both were of sufficient moment to the people of our country to have it go to them as cheaply as possible, and one of the cheapest agencies of information is the Congressional Record. Does not know how many copies of the record are issued. Takes all he can get and sends them out. Supposes other members do the same. Permitted this document to go out under his frank. Does not know how many went out. Sorry more did not go out. Paid for what he ordered. How many he ordered, he does not remember, but he ordered quite a number. Paid for them himself at the government rates, and sent them out. How many he could not say; does not remember, but it was several thousands. Knows nothing about thirty thousand said to have been sent out.

Witness's attention is called to the following, and is asked if that took place, and says that the record shows that it did.

"Mr. BOWERS: I yield to the gentleman from New York (Mr. Sulzer) such time as he may desire.

Mr. SULZER: Mr. Chairman, the recent decision of the United States Supreme Court in the case of the United Hatters of North America is of far-reaching importance and affects every workingman in our country. That decision practically holds that a labor organization is a trust and subject to the provisions of the so-called 'anti-trust law.' I do not think this was the intention of Congress when the act was passed; but be that as it may my judgment is that this decision should be given the widest possible publicity, with the comments of the leaders of organized labor, to the end that all may know. So, Mr. Chairman, I send to the Clerk's desk and ask to have read in my time a very able and exhaustive and lucid commentary on the decision, by President Samuel Gompers, an editorial by him in the American Federationist, and the decision itself.

"Mr. CHAIRMAN: The Clerk will read.

"The Clerk read as follows:

"(Editorial from American Federationist, by Samuel Gompers.)

"Labor organizations must not be outlawed—the Supreme Court's decision in the Hatters' Case."

Suppose it was either read or pretended to be read. Does not know how 30,000 envelopes with his frank would become accessible to the A. F. of L. headquarters. When a speech is made and
972 published in the record, it is public property, and the government will print them at government rates, and they are entitled to go through the mail under the law as Congressional matter, and anyone can order the speeches in the record and send them out. Envelopes are printed by the Government Printing Office, and are furnished gratis to the gentleman whose frank is on the envelope.

(Page 2094.) Has met Arthur Holder. Thinks he has met Thomas F. Tracy. Neither of these gentlemen came to witness on March 17th, and asked him to get this matter into the Congressional Record, so it could be used in the manner in which it was used.

Testimony in Rebuttal.

(Page 2096.) Mr. Davenport offers in evidence from the January, 1909, Federationist, as follows:

"American Federationist Official Monthly Magazine, Devoted to the Interests and voicing the demands of the Trade Union Movement Published by the American Federation of Labor at 423 425 G Street, N. W., Washington, D. C.

"Correspondents will please write on one side of the paper only, and address Samuel Gompers, Editor, Washington, D. C.

"All communications relating to finances and subscriptions should be addressed to Frank Morrison, Secretary, Washington, D. C.

"The Publisher reserves the right to reject or revoke advertising contracts at any time.

"The editor will not be responsible for the return of unsolicited manuscripts.

"The American Federation of Labor is not sponsor for nor interested in, any souvenir publication of any kind.

"Entered at Washington, D. C. postoffice as second-class matter.

"Subscription, Per annum \$1.00, Single copy 10 cents.

"Executive Council, A. F. of L. Samuel Gompers, President, James Duncan, First Vice-President, John Mitchell, Second Vice-President, James O'Connell, Third Vice-President, Max Morris, Fourth Vice-President, Dennis A. Hayes, Fifth Vice-President, William D. Huber, Sixth Vice-President, Joseph F. Valentine, Seventh Vice-President, John R. Alpine, Eighth — John B. Lennon,
973 Treasurer, Frank Morrison, Secretary."

From page 52 of the January, 1909, Federationist, he invites attention of the Court to the following:

"With the patriot we say, 'May my country always be right, but whether right or wrong, my country.' To this let each worker add this: 'May my union be always right, but whether right or wrong, my union.'"

From the April, 1909, Federationist, page 378, Mr. Davenport offers in evidence the following:

"Official American Federationist, Official Monthly Magazine, Devoted to the interests and voicing the demands of the Trade Union Movement. Published by The American Federation of Labor at 801-809 G Street, N. W., Washington, D. C.

"Correspondents will please write on one side of the paper only and address Samuel Gompers, Editor, Washington, D. C.

"All communications relating to finance and subscriptions should be addressed to Frank Morrison, Secretary, Washington, D. C.

"The publisher reserves the right to reject or revoke advertising contracts at any time.

"The editor will not be responsible for the return of unsolicited manuscripts.

"The American Federation of Labor is not sponsor for, nor interested in, any souvenir publication of any kind.

"Entered at Washington, D. C. postoffice as second-class matter.

"Subscription: Per annum \$1.00 Single copy 10 cents.

"Executive Council, A. F. of L. Samuel Gompers, President, James Duncan, First Vice-President, John Mitchell, Second Vice-President, James O'Connell, Third Vice-President, Max Morris, Fourth Vice-President, Dennis A. Hayes, Fifth Vice-President, William D. Huber, Sixth Vice-President, Joseph F. Valentine, Seventh Vice-President, John R. Alpine, Eighth Vice-President, John B. Lennon, Treasurer, Frank Morrison, Secretary."

From the April, 1909, Federationist, page 344, Mr. Davenport offers the following:

"The opinions in this decision by the Court of Appeals are a happy departure from the medieval concept of the rights of the workers and their relation to employers and the public which so many judges hold. It is at last recognized that times
974 have changed and that modern industrial conditions cannot justly be measured by the logic which would apply to an era which has passed.

"By this recent decision the American Federation of Labor is still enjoined from maintaining a boycott against the Van Cleave Buck's Stove & Range Company, but we have said before and now repeat that there is no law compelling union men and their friends to buy a Van Cleave Buck's stove or range, and surely no court order can have that effect."

Mr. Davenport offers in evidence from the April, 1909, Federationist, the following:

"A Self-inflicted Boycott.

"If ever there was self-inflicted and personally conducted boycott, it has been that engineered by the Van Cleave Buck's Stove & Range Company against itself. Its hostile, sensational and unjust attacks upon the men of labor and their organizations have supplied the material for keeping the boycott fresh in the minds of all pur-

chasers. It has been the action of the Buck's Stove & Range Company itself, far more than anything labor has done, which has made this the most spectacular boycott of our time.

"While the Buck's Stove & Range Company was published on the "We Don't Patronize" list of the American Federationist, along with a number of firms whose relations with organized labor were unfair, yet this firm attracted no more attention than many of the others until Mr. Van Cleave, through his man Brandenburg and the Pinkerton and Turner detective agencies began a crusade of character assassination against the men who had devoted their lives to securing the rights and liberties of their fellow-men. Mr. Van Cleave, being president of the Buck's Stove & Range Company, and also president of the National Manufacturers' Association, all his hostile acts took on an intensified meaning to the men of labor. The real activity in the boycott began when an application for an injunction against the American Federation of Labor to restrain it from boycotting this firm followed the personal attacks upon the men of labor. Then, indeed, the union men and their friends from the Atlantic to the Pacific sat up and took notice and remembered the unfair standing of this firm when they were buying goods.

"When the temporary injunction was issued prohibiting the exercise of the right of free press and free speech and the daily press rang with statements of the case in relation to the Buck's Stove & Range Company, then indeed did many people who had not been concerned with the attitude of labor, in any other boycott 975 conclude that they would not purchase such goods. Then there was the making permanent of the temporary injunction, and the appeals for funds by the American Federation of Labor with which to carry the case to higher courts. There was the President's report to the conventions, the actions of two conventions—all despite the clause of the original injunction prohibiting the exercise of free press or free speech in relation to the Buck's Stove and Range Company. It was these things which kept the boycott fresh in the minds of the workers and their friends and aroused the most intense interest. Every hostile move of the Van Cleave Buck's Stove and Range Company, every action leading to greater publicity of the case increased the boycott. It must be remembered too, that the injunction did not and does not apply beyond the District of Columbia.

"The labor press of the country and the official journals of the various trades felt entirely free to publish the non-union and hostile status of the Van Cleave Buck's Stove and Range Company and to comment freely upon the original injunction and contempt proceedings. The institution and prosecution of the proceedings for contempt of the injunction and the sentence of Gompers, Morrison and Mitchell to imprisonment for contempt made every union man and every patriotic citizen realize that while constitutional rights are greater than property rights a strong effort was being made to establish the contrary. By a perfectly understandable mental process all these happenings kept before the public the fact that labor

had a formal boycott against the Buck's Stove and Range Company, hence we repeat the Buck's Stove and Range Company has been the most potent agent in fastening upon itself a boycott—primary, secondary and possibly everlasting—because it has assumed that the courts of the land would bolster up its every attack upon the workers, regardless of how far it invaded the inherent and constitutionally guaranteed rights of the people."

The foregoing was objected to as evidence which, if proper at all, should have come in in chief to prove the establishment of a boycott, respondents' counsel stating that he did not object on the ground that the attention of Mr. Gompers had not been specifically called to it.

Mr. Davenport offers in evidence the part of the President's Report to the A. F. of L., in Toronto, in 1909, as published on page 1071 of the December, 1909, *Federationist*, as follows:

976

The Boycott—Judicial Opinion.

While the discussion of greater issues in the past year has tended to relegate to the background such rights as that of the boycott, yet I should be recreant in my duty were I to remain silent upon that subject, and thus, perhaps, strengthen an impression which has been assiduously given out by our opponents, that the boycott—that is, the right to withdraw patronage, to bestow it upon whom we please—has been withdrawn from the workers of the country during the legal proceedings in relations to the injunction secured by the Buck's Stove and Range Company.

It will be remembered that the injunction was sought primarily to restrain the people in their right to quit buying Buck's stoves and ranges. It over-reached itself so far that the right to freedom of speech and press became involved. However, no consideration of the injunction has been possible by the courts without taking up the principle involved in the boycott.

We have always held, and we still hold, that the workers, or any of the people, have the right to withhold or to bestow their patronage as they choose; that they have the right to advise friends and sympathizers of this action and of the reasons therefor. It is hardly necessary to state that in the case of the workers the unfair attitude of the dealer in question has always been the reason for withdrawal of patronage. It has been made clear that he refused to pay the standard rate of wages and to agree to other equitable conditions which the workers seek through their organizations, and hence the withdrawal of patronage. The boycotts declared by other citizens have sometimes been placed for other reasons, and they can safely be left to a defense of their own actions. I only wish to point out in passing that the boycott is by no means a weapon used by the workers alone. It is one of those inalienable rights which are at times used by all people. The right to withhold or bestow patronage is one of those things which can neither be enjoined, forbidden, nor punished.

Upon the workers and their organization, however, was made the attempt to have the boycott declared unlawful and a conspiracy, and hence, subject to judicial decree and punishment.

977 Mr. Davenport offers in evidence from the Report of Mr. Gompers to the 1909 Convention at Toronto, published in the Report of the Proceedings of the A. F. of L. of 1909, page 31, under the head "The Boycott—Judicial Opinion."

The Boycott—Judicial Opinion.

While the discussion of greater issues in the past year has tended to *regulate* to the background such rights as that of the boycott, yet I should be recreant in my duty were I to remain silent upon that subject, and thus, perhaps, strengthen an impression which has been assiduously given out by our opponents, that the boycott—that is, the right to withdraw patronage, to bestow it upon whom we please—has been withdrawn from the workers of the country during the legal proceedings in relations to the injunction secured by the Buck's Stove and Range Company.

It will be remembered that the injunction was sought primarily to restrain the people in their right to quit buying Buck's stoves and ranges. It over-reached itself so far that the right to freedom of speech and press became involved. However, no consideration of the injunction has been possible by the courts without taking up the principle involved in the boycott.

We have always held, and we still hold, that the workers, or any of the people, have the right to withhold or to bestow their patronage as they choose; that they have the right to advise friends and sympathizers of this action and of the reasons therefor. It is hardly necessary to state that in the case of the workers the unfair attitude of the dealer in question has always been the reason for withdrawal of patronage. It has been made clear that he refused to pay the standard rate of wages and to agree to other equitable conditions which the workers seek through their organizations, and hence the withdrawal of patronage. The boycotts declared by other citizens have sometimes been placed for other reasons, and they can safely be left to a defense of their own actions. I only wish to point out in passing that the boycott is by no means a weapon used by the workers alone. It is one of those inalienable rights which are at times used by all people. The right to withhold or bestow patronage is one of those things which can neither be enjoined, forbidden, nor punished.

978 Mr. Davenport offers in evidence from page 118 of the Report of the Convention of the A. F. of L., at Toronto, in 1909, as follows:

"President Gompers announced the distribution to various committees of the following portions of the President's report, and of the reports of the Executive Council."

From page 119 as follows:

"The Boycott—Judicial Opinion to the Committee on President's Report."

From page 194 as follows:

"President Gompers announced that that part of the report of the President relating to the philosophy of boycotts would be referred to the Committee on Boycotts."

From page 281, as follows:

"We concur with the sentiment expressed by the Committee on Boycotts."

Mr. Davenport offers in *re-evidence* from the Report of the Committee on Boycotts of the same Convention as follows:

We concur with the sentiment expressed by the Committee on Boycotts at the Norfolk Convention that the boycott should only be resorted to after all efforts at adjustment have failed, but when instituted, it should be made so effective that speedy agreement between the firm and union affected will follow. In speaking of the boycott, the President, in his annual report, had this to say:

"While the discussion of greater issues in the past year has tended to relegate to the background such rights as that of the boycott, yet I should be recreant in my duty were I to remain silent upon that subject, and thus, perhaps strengthen an impression which has been assiduously given out by our opponents, that the boycott—that is, the right to withdraw patronage, to bestow it upon whom we please—has been withdrawn from the workers of the country during the legal proceedings in relation to the injunction secured by the Buck's Stove and Range Company.

"It will be remembered that the injunction was sought primarily to restrain the people in their right to quit buying Buck's stoves and ranges. It over-reached itself so far that the right to freedom of speech and press became involved. However, no consideration of the injunction has been possible by the courts without taking up the principle involved in the boycott.

"We have always held, and we still hold that the workers, or any of the people, have the right to withhold or to bestow their patronage as they choose; that they have the right to advise friends and sympathizers of this action and of the reasons therefor. It is hardly necessary to state that in the case of the workers, the unfair attitude of the dealer in question has always been the reason for withdrawal of patronage. It has been made clear that he refused to pay the standard rate of wages, and to agree to other equitable conditions which the workers seek through their organizations, and hence the withdrawal of patronage. The boycott declared by other citizens have sometimes been placed for other reasons, and they can safely be left to a defence of their own actions. I only wish to point out in passing that the boycott is by no means a weapon used by workers alone. It is one of those inalienable rights which are at times used by all people. The right to withhold or bestow patronage is one of those things which can neither be enjoined, forbidden, nor punished."

With the sentiment expressed and the policy enunciated our committee is in most hearty accord. The wares of the labor-boycotted enterprise, to the eye, are made up of the products of nature, fashioned by the hands of more or less unskilled workers; but to the individual with the capacity for analysis, there is visible the blood and innocence of the child, the health and virtue of the woman, and the disputed and denied right of the toiler to collectively bargain for the sale of labor. It impresses your committee that the opposition to the boycott, when it takes its legal form, is really intended to cover the economic iniquities of affected capital, to withdraw the attention of the public from the labor exploitation and center it on the ethics of the boycott, as wrongfully expounded, to becloud and befog the real issue, so that the unfair producer, the enemy of his own class as well as of the wage-earner, may be free to continue his industrial piracy while the consumer is sent chasing false gods and exploded economic theories. The protection of the law is sought by skillful pleaders for special privilege, in order that the rottenness, the tyranny and the horrible working conditions associated with the boycotted manufacturing plant may be obscured to the public gaze. If in instances where the boycott is now necessary the right kind of publicity could be had, the boycott would be unnecessary, for an aroused public conscience would speedily compel the manufacturing and the selling malefactor to put his establishment in industrial order or go out of business.

But under present conditions the boycott is a necessary legal and moral weapon, and one that, as the President well says, there should be no hesitation to resort to when other remedies fail and the occasion demands the unusual and drastic antidote. Lawyers' associations, medical societies, scientific bodies, even the fraternal societies, all forms of combined human endeavor—all resort to the boycott to achieve their legitimate, and in some instances illegitimate ends. Why then should not the labor union have that right with its cause a just one, and its desire the betterment and uplifting of those who follow the scriptural injunction, "In the sweat of thy face shalt thou eat thy bread." If an individual has the right to refuse to patronize, then that same individual has the right to enlist the sympathies of his fellowman, and it follows that if the two have the right to refuse to patronize, then labor in combination has the right to refuse to patronize.

We say that when your cause is just and every other remedy has been employed without result, boycott; we say that when the employer has determined to exploit not only adult male labor, but our women and our children, and our reasoning and appeal to his fairness and his conscience will not sway him, boycott; we say that when labor has been oppressed, browbeaten and tyrannized, boycott; we say when social and political conditions become so bad that ordinary remedial measures are fruitless, boycott; and finally we say, we have the right to boycott, and we propose to exercise that right.

In the application of this right of boycott, to paraphrase the President, we propose to strive on and on.

Respectfully submitted,

DENIS A. HAYES,

Chairman:

W. ALEX. VICKERY,

CHARLES DOLD,

D. F. MANNING,

M. ZUCKERMANN,

WM. Q. SULLIVAN,

VICTOR ALTMAN,

AUGUST MOLTER,

MICHAEL J. HALLINAN,

THOMAS L. HUGHES,

P. J. JORDAN,

H. A. COOPER,

LOUIS KEMPER,

C. W. FRY,

JAMES M. LYNCH,

Secretary.

I move the adoption of the report of the committee as a whole.
(Seconded.)

Motion carried.

980

Subrebuttal.

(Page 2113.) Without waiving the objections which have been made, that the entire editorial, part of which was quoted, should be in evidence, if any of it was, Mr. Ralston offered and asks that it be incorporated in full in the record at this point.

Editorial.

By Samuel Gompers.

Buck's Stove and Range Company Injunction Modified.—Portentous Decision and Opinions.

On March 11th the Court of Appeals of the District of Columbia rendered a decision upon the appeal of the American Federation of Labor et al. against the temporary injunction which Justice Gould of the Supreme Court of the District of Columbia had issued December 18, 1907, upon the petition of the Buck's Stove and Range Company; made permanent by Justice Clabaugh.

The decision greatly modifies the original injunction. It eliminates the prohibition of free press and free speech as to printing or discussing anything in relation to the Buck's Stove and Range Company or discussion of the injunction itself. It, however, still restrains freedom of the press in that it forbids the publication of the "Buck's Stove and Range Company" on the "We Don't Patronize"

list and enjoins the boycott. This decision of the Court of Appeals and the accompanying opinions form a most important addition to the history of judicial action in relation to Labor.

Justices Robb and Van Orsdel concur in the decision, though giving widely different opinions, and Chief Justice Shepard dissents.

Before discussing this decision we will remind our readers briefly of the history of the Buck's Stove and Range Company injunction.

The text of the original injunction, and also that of the modified injunction, is quoted elsewhere in this issue as a portion of the Court of Appeals decision. The original injunction not only prohibited the publication of the Buck's Stove and Range Company in the "We Don't Patronize List" of the American Federation of Labor, but also enjoined the right of free press and free speech, forbidding any reference whatever to the Buck's Stove and Range Company, either oral or printed, and prohibiting the publication and mailing of the American Federationist or any other printed matter containing any reference to the Buck's Stove and Range controversy. The discussion of the injunction itself and the principle upon which it was based was prohibited by the very terms of the order.

It will be remembered that the American Federation of Labor immediately complied with the original injunction issued December 18, 1907, to the extent of removing the Buck's Stove and Range

Company from the "We Don't Patronize List." Editorially
981 and by speech and circulars and in convention the officers of the American Federation of Labor, however, continued to protest against the deprivation by injunction of the constitutional liberties of free press and free speech.

Samuel Gompers, John Mitchell, and Frank Morrison, upon the petition of the Buck's Stove and Range Company, were subsequently tried for contempt of the injunction, because they had exercised these rights, and on December 23, 1908, were sentenced by Justice Wright to imprisonment for twelve, nine, and six months respectively.

The appeal by the American Federation of Labor against the original injunction was then pending. It is upon this appeal that the decision of March 11th was rendered. An appeal from Justice Wright's opinion and sentence in the contempt case is now pending before the same Court of Appeals.

We print elsewhere in this issue the exact text of the decision and the widely differing opinions of the three judges.

We trust that our readers will study carefully the entire text of the decision, especially those portions in which the three justices express their own opinions on the merits of the case and the rights and principles involved.

The reasoning of Chief Justice Shepard, who dissents from Justices Robb and Van Orsdel, shows that study of modern industrial conditions which is so often lacking on the part of the judiciary. His argument on free press and free speech is a veritable classic and will live for all time, and though the minority opinion in this case, yet we believe its reasoning will at no distant day become the ruling of the courts on the issues involved.

Judge Van Orsdel also reasons clearly and cogently on the rights of labor, especially in regard to the strike, and somewhat less accurately on the boycott. Indeed, if Justice Van Orsdel followed his reasoning in his decision he would be found dissenting and declaring the injunction unconstitutional.

Even Justice Robb, whose opinion is least favorable to our contentions, yet finds that the original injunction was altogether too severe. He believes that the "We Don't Patronize List" should be enjoined if it is used in furtherance of the boycott, but that no injunction should operate to prevent the publishing, mailing, or distribution of the American Federationist, nor should an injunction hold to deny freedom of speech or of the press in any other particular except the "We Don't Patronize" or "Unfair" list, when used as part of an unlawful conspiracy.

Justice Robb is absolutely wrong in his assumption that any such unlawful "conspiracy" existed, but he bases his decision on this error in fact.

The independent use of a customer's purchasing power and the legality of the direct boycott are upheld by Justices Shepard and Van Orsdel, in the main, along the lines which Labor has so long contended. Indeed, their language is sometimes almost identical with that which Labor has used in explanation and defense of these rights.

982 The reasoning of Justices Shepard and Van Orsdel in relation to strikes is accurate and splendidly put. They both show how the right to strike gradually emerged from a criminal conspiracy in the eyes of the law into an acknowledged right on the part of the workmen, and that the damage resulting to the employer does not affect that right, it being a damage "without remedy at law."

The same reasoning applied to the boycott as it is actually used, would have landed the boycott in the same category of legal rights as the strike, but all of the justices stopped short on their boycott reasoning and decided that the concerted action and the warning to dealers of withdrawal of patronage constituted some sort of an unlawful conspiracy which should be enjoined.

The Court of Appeals did not take any original testimony in the case, and we think the judges are somewhat in error in their estimate of the actual facts in relation to the boycott of the Buck's Stove and Range Company. This is understandable from the fact that the American Federation of Labor has at no time entered a detailed defense in court to the allegations of the Buck's Stove and Range Company, although the charges are untrue in many important particulars, as we have shown in these columns.

On account of the fundamental issues of free press and free speech, which were involved in the original injunction, we preferred to stand upon the unconstitutionality of the injunction rather than obscure this great issue by going into the details of the original trouble with the Buck's Stove and Range Company and the manner in which the boycott was carried on.

Justice Wright's prejudiced and misleading extracts from the

original testimony, and his ignoring of testimony, also tended still further to becloud the facts, so that we are not surprised that the justices of the Court of Appeals do not see their way through the maze to enunciate the principles underlying the right to boycott as clearly as they do the right to strike.

The prohibition of free press and free speech which loomed so large in the original injunction is lessened to a considerable extent in the modified injunction.

Indeed, all three justices are at pains to say that the only reason the publication of the Buck's Stove and Range Company is enjoined from appearing on the "We Don't Patronize" list is because they believe that a "conspiracy" to boycott had been entered into and that "threats," intimidation and coercion had been used on innocent third parties. On this wrong assumption the modified injunction is ordered.

It is regrettable that the court should be so in error as to the facts of the boycott.

Even if we had been guilty of unlawful conspiracy and coercion and intimidation—which we were not—surely there should be some more adequate punishment than a mere injunction. In fact, existing laws do provide greater punishments of these offenses, and we respectfully submit that if we be found guilty of them the usual legal punishment should apply and we should not be permitted to escape under a mere injunction.

Justice Van Orsdel in defining a legal boycott says:

Again, we do not assume that it will be contended that a citizen has not perfect freedom to deal with whom he pleases, and 983 withhold his patronage for any reason that he may deem proper, whether the reason be one originating in his own conscience, or through the advice of a neighbor, or through the reading of an article in a paper. Neither would it be unlawful for such citizen to advise another not to deal with a person with whom he has concluded not to continue his patronage. If this advice may extend to one, it may to a hundred; and the thing done will not be actionable so long as it is an expression of honest opinion and not slanderous, however much the intercourse between this citizen and his neighbor may operate to injure the person against whom the advice is directed.

* * * * *

No one doubts, I think, the right of the members of the American Federation of Labor to refuse to patronize employers whom it regards as unfair to labor. It may procure and keep a list of such employers not only for the use of its members, but as notice to their friends that the employers whose names appear therein are regarded as unfair to labor. This list may not only be procured and kept available for the members of the association and its friends, but it may be published in a newspaper or series of papers. To this extent they are within their constitutional rights, at least, where a court of equity can not intervene.

This is a very fair statement of the process of the boycott against

the Buck's Stove and Range Company, hence we repeat, we can not see how an injunction can rightfully apply.

Indeed, Justice Van Orsdel, after reviewing the case and citing authorities, says:

There is nothing complained of in this case for which there is not a specific legal remedy provided. Hence, the only excuse for a court of equity taking jurisdiction is because the legal remedy is inadequate to prevent irreparable injury and avoid a multiplicity of suits. This is the one instance when equity jurisdiction will be assumed and exercised with the utmost caution; not assuming anything that can be avoided, or taking jurisdiction where the legal remedy is at all adequate.

But we most earnestly protest against this use of the injunction merely because it is more convenient than the normal legal remedy of suits and proof of damage. It is just this abuse of the injunction power which led to such injunctions as the original one issued by Justice Gould. No matter how cautiously or carefully used, the application of the injunction in labor cases where there is another equitable remedy at law is sure to do great damage, especially in the setting of precedents for still graver usurpation of power at the hands of courts.

As Justice Van Orsdel truly says:

The courts of the United States will be useful and fulfill the functions for which they were created, only so long as they are content to interpret the laws in conformity with the limitations of the constitution. Any attempt to disobey these restrictions is a step across the danger line; and will, of necessity, lead to judicial arrogance, tyranny, and oppression. If, in any particular, we have outgrown the constitution, the remedy is plain and simple. It is within the power of the people to amend it; but this prerogative is not reposed in the courts.

The more carefully the complaint of the Buck's Stove and Range Company is studied in the light of facts, the more clear becomes the conviction that if that company suffered any legal damage, the ordinary processes of damage suit and proof before jury should have been invoked instead of the injunction.

Note what Justice Van Orsdel says further of the boycott:

I conceive it to be the privilege of one man, or a number of men, to individually conclude not to patronize a certain person or corporation. It is also the right of these men to agree together, and to advise other, not to extend such patronage. That advice may be given by direct communication or through the medium of the press, so long as it is neither in the nature of coercion or a threat. As long as the actions of this combination of individuals are lawful, to this point it is not clear how they can become unlawful because of their subsequent acts directed against the same person or corporation. To this point, there is no conspiracy--no boycott. The word

984 "boycott" is here used as referring to what is usually understood as "the secondary boycott"; and when used in this opinion, it is intended to be applied exclusively in that sense. It is, therefore, only when the combination becomes a conspiracy to

injure by threats and coercion the property rights of another, that the power of the courts can be invoked. This point must be passed before the unlawful and unwarranted acts which the courts will punish and restrain are committed.

The absolute fact is that this point never was passed in the boycott of the Buck's Stove and Range Company.

The union men and their friends expressed their intention not to buy Buck's stoves and ranges because that firm refused to grant its employes the equitable conditions and hours which the unions could obtain from other firms in similar lines of business.

Union men notified local dealers that they did not intend to buy any more Buck's stoves and ranges. Also stated that they would transfer their patronage to firms which did not carry the unfair stoves.

Never anywhere in the history of this boycott is there the slightest record of the union men or their friends attempting to "coerce" third parties against their will to quit buying the Buck's stoves and ranges.

In order to do this they would have to threaten or intimidate or "coerce" other customers. This was never done. Where, then, lay the conspiracy, even according to Justice Van Orsdel's own definition?

The judges in this decision seem to confuse the retail dealers with customers who might buy stoves. The retail dealers were not customers buying stoves in the same sense as a man who bought one for use in his household. They were the representatives of the Buck's Stove and Range Company to put the stoves within reach of the retail customer. Even then no merchant was subjected to "coercion" or made the victim of any conspiracy against his business.

Instead of quoting other cases on conspiracy, we wish that the judges had analyzed the case in point more closely. While some letters are quoted from certain firms to the Buck's Stove and Range Company, yet there is no exact statement of the action by union men and their friends which led to these letters. It is all *ex parte* statement on the merchant's part. It may easily be inferred that a merchant wishing to terminate his business relations with the Buck's Stove and Range Company might considerably exaggerate the pressure put on him by the union men and their friends.

Under Justice Van Orsdel's definition of the boycott we state most truthfully, earnestly, and sincerely that at no time has any action of the unions exceeded what he lays down as perfectly legal.

A notice from the union men to the retail dealer that there was a boycott on the Buck's stoves and ranges was the only means of reaching the article as it came in contact with the retail purchaser. To notify the firm itself would accomplish no purpose, since it already knew the fact and had every reason to hide it from the retail dealers, and thus keep them in ignorance that organized labor and its friends would no longer buy the stoves.

Were the letters published from local unions and central bodies to retail dealers it would be found that there was never a
985 single threat. There was only the statement of fact as to the difficulty between the Buck's Stove and Range Company and

its employes, and this was given as a reason why organized labor would not purchase these stoves until relations became harmonious between the firm and its employes.

Organized labor, in giving this notice to retail dealers, was really doing them a service. It could have ceased to buy the stoves and have stayed away from the stores, saying never a word as to the reasons why, and thus have left the retail dealer to come to grief with his stock of stoves, not knowing why they were no longer purchased.

We have never slandered, we have never libeled the Buck's Stove and Range Company or its president, Mr. Van Cleave, or any of his associates. We have confined ourselves strictly within the limits of truth in the controversy between that company and Labor.

Feeling that the retail dealer was an innocent party to the controversy, organized labor strove not to ruin his business, but to let him know how he might keep their patronage. On this information he might adjust his business relations to retain their trade if he valued it. If not, he might continue to keep the unfair stoves and sell them to people who were not members of organized labor or interested in its contentions or the sympathies of its friends.

In stating that they would entirely withdraw their patronage from a dealer who continued to handle Buck's stoves and ranges the union people were only exercising the right which they undoubtedly possess to dispose of their purchasing power wherever they please. It is perfectly human and understandable that they would prefer to buy goods where retail dealers handled, if not union-made goods, at least those which were not under the ban of being produced by manufacturers hostile to the worker's cause.

The sum of Labor's offending seems to be that it has been too open and frank in its dealings. It could have ceased its patronage with precisely the same effect which has obtained and have left not the slightest evidence of how the result was accomplished. Its desire to save the retail dealer from the embarrassment of innocently loading up with boycotted stoves seems to have reacted as an evidence of "conspiracy" and "coercion" to ruin the dealer's trade. Just the opposite effect was sought by the friendly warnings, but as yet none of our judges seem to understand this phase of the case.

So great an advance has, however, been made in this decision that in some future decisions we may look for a full understanding of the boycott.

After the general decision itself is discussed it is most interesting to review the dissenting opinion of Mr. Chief Justice Shepard. He says:

Unable to concur entirely in the modified decree directed to be entered in this case, it is proper to state the grounds of my conclusion.

1. A conspiracy is rightly defined to be a combination of two or more persons to accomplish something that is unlawful, or to accomplish something that is not unlawful by the use of unlawful means.

The logical deduction is, that a thing which is lawful when done by one person does not become unlawful when done by two or more

persons in combination, provided no unlawful means are agreed upon or used. This doctrine having been denied by some of the English judges, in cases arising out of trades disputes, it was finally settled by act of parliament. The sixth section of the statute, adopted

December 21, 1906, reads as follows: "An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable."

Chief Justice Shepard here agrees with the definition of conspiracy which the labor unions have long held to be correct, but which less enlightened judges have denied. Indeed the favorite means of finding a strike or a boycott a criminal conspiracy has been to insist that what might with perfect legality be done by one person became criminal when done by two or more. We earnestly commend the above opinion of Justice Shepard's to all thoughtful people. We believe it expresses a truth which when applied to many intricate problems of modern industrial life will tend to give justice to the worker.

Justice Shepard approvingly quotes the English trades dispute act enacted in 1906, defining very clearly the fact that a combination of two or more persons to do a thing shall not be actionable unless the thing done would be actionable if done without such agreement or combination.

If Congress would take this reasonable view of the case and enact a measure covering the same ground as the British trade dispute act then would Labor secure relief from the wrongful application to unions of the Sherman anti-trust act and also from much abuse of the injunction writ.

Justice Shepard reviews the provisions of the original injunction which forbade the printing or distribution through the mails of the American Federationist if it contained any reference to the boycott and also prohibited any oral mention of the relations of the Buck's Stove and Range Company's affairs to Labor, not only by the officers of the American Federation of Labor, but by any agent or attorney. On the general character of the original injunction he says:

The sustaining of such a decree by a court of equity would violate the constitutional rights of the citizen.

It would mark the beginning of the era of judicial tyranny by the branch of the government charged with the duty of protecting the citizen in his constitutional and legal rights.

The clause in the constitution guaranteeing free speech and a free press was placed there to prevent a repetition of the abuses that had grown up in the monarchies of Europe, government censorship of the press.

It is folly to assert that this provision of the constitution is a mere inhibition on Congress from passing any law abridging the freedom of speech and the freedom of the press.

It forbids government censorship in all forms, and it would be difficult to conceive of a more effective method of establishing a government censorship than through the writ of injunction.

For the violation of its commands, the contemnor can be dealt

with in the most summary manner—tried, adjudged, and sentenced by the judge whose order has been disobeyed.

The right of the citizen to express his opinions in the way of just criticism, either orally or through the press, is a privilege that can not be abridged.

This right is as essential to his liberty as the right to choose his calling. It may not be assailed even by the courts. The right is equally sacred whether exercised individually or in conjunction with others.

This is in marked contrast to Justice Wright's assertion which we quote from his decision sentencing Gompers, Mitchell, and Morrisson to prison for alleged contempt of the original injunction.

Says Justice Wright:

So with respect to the inhibition against abridging the freedom of speech or of the press; the constitution nowhere confers
987 a right to speak, to print, or to publish; it guarantees only that in so far as the federal government is concerned its Congress shall not abridge it; and leaves the subject as the other to the regulation of the several states, where it belongs.

The contrast of judicial opinion is so marked that no comment is necessary, though we might say, in passing, that nowhere do we discover in this opinion of the Court of Appeals any disposition to agree with Justice Wright's construction as to what constituted contempt of the original injunction.

Referring to the right to publish Justice Shepard says, in paragraph 3 of his opinion, in regard to publication of the Buck's Stove and Range Company in the "We Don't Patronize List:"

Assuming that the publication of the Buck's Stove and Range Company in the "We Don't Patronize" column of the American Federationist was a step in the formation of a conspiracy to coerce independent dealers into refusing to have further business relations with that company, I can not agree that the publication can be restrained for that reason. Regardless of its character or purpose, the publication is protected from restraint, in my opinion, by the first amendment of the constitution which forbids any law abridging the freedom of the press.

It would seem from the above quoted paragraphs that Justice Shepard finds ample reason for refusing to agree to an injunction which would forbid the publication of any firm on the "We Don't Patronize List." Indeed, he follows it with quotations which are a splendid defense of the right of free press and free speech. His opinion on this point and the authorities he quotes in its support are worthy of careful study by every thoughtful person. He goes the length of saying that even were the publication of a name on the "We Don't Patronize List" clearly shown to be a step in a conspiracy he still does not think the publication should be refused the privilege of mailing, printing, and distribution.

After this convincing and splendid argument in favor of free press and free speech Justice Shepard says the modified injunction should issue because he can not believe that the union members should be permitted to "threaten" dealers with loss of their patron-

age. We have answered elsewhere in this editorial that there were no unlawful "threats," simply a statement that patronage would be withdrawn.

Justice Shepard even says:

So long, therefore, as the members of the Federation of Labor contented themselves with refusing to purchase the goods of the Buck's Stove and Range Company, from it or from others, their combination was not illegal.

Regrettably Judge Shepard continues:

But when they exceeded that limit and extended their purpose to the attempted coercion of other persons to compel them, against their will, to cease business relations with the company, the combination became unlawful.

If the notice of withdrawal of patronage is held to be unlawful coercion, we answer that such notice is not essential. Henceforth in the observance of a boycott the union men and their sympathizers,

it appears, have only to withdraw their patronage and say 988 nothing about it to the merchant and they will be exercising their right strictly within the decision just rendered.

In sharp contrast to the opinion of Chief Justice Shepard is a remark of Justice Robb, who regards it as an evidence of "conspiracy" and "coercion" that the unions all over the country took practically simultaneous action in boycotting the Buck's Stove and Range Company and hence believes that the officers of the American Federation of Labor should be held responsible for having directed and promoted the boycott.

In this assumption of concerted knowledge and action he differs from Justice Wright, who said on this very point in his decision:

What knows the worker in Texas, Florida, Maine, and Oregon of the merits of the original controversy of 36 metal polishers in Missouri? What knows he of the refined distinctions about "boycott," "conspiracy," "injunction," and the "voidness for want of jurisdiction" of judicial decrees?

We might leave the reader to form his own conclusion as to which judge best understands the knowledge which the man of Texas, Florida or Oregon may have as to the important affairs of the American Federation of Labor.

This modified injunction more than hints that while the publication of the Buck's Stove and Range Company is enjoined in the "We Don't Patronize List," yet the use of that list itself is not enjoined, and the opinions seem to be that the American Federationist would not, under any circumstances, be denied the privileges of printing and mailing. So one wonders what would be done if we were to print the firm on the "We Don't Patronize" list, and then use our admitted right to distribute the publication. Could we be adjudged in contempt in the face of these decisions? An interesting question, surely.

But despite the decision of the Court of Appeals maintaining the injunction even in modified form, the reasoning of the justices is far in advance of most of the decisions rendered by the courts in recent years.

These opinions will help to check judicial invasion of the rights and liberties of the people. They may perchance be a hint to other judges to "slow down" in their assumptions that the workers have no rights that the courts are bound to respect.

The opinions in this decision by the Court of Appeals are a happy departure from the medieval concept of the rights of the workers and their relations to employers and the public which so many judges hold. It is at last recognized that times have changed and that modern industrial conditions can not justly be measured by the logic which would apply to an era which has passed.

By this recent decision the American Federation of Labor is still enjoined from maintaining a boycott against the Van Cleave Buck's Stove and Range Company, but we have said before and now repeat that there is no law compelling union men and their friends to buy a Van Cleave Buck's stove or range, and surely no court order can have that effect.

Justice Robb, whose opinion is least favorable to Labor's contentions, says on this point:

We have no power to compel the defendants to purchase complainant's stoves.

989 The decision does not clearly uphold the right to boycott even in accordance with its own logic.

But in view of the false premises and fallacious reasoning by which the courts for years have been extending the abuse of the injunction writ and by which a whole false superstructure of decisions have been reared, it is perhaps too much to expect that the Court of Appeals in one decision would recognize and define the full legal rights of the workers and thus overturn the consistently illogical and unjust line of injunction labor decisions for the past 20 years, but progress has been made. The workers will continue their struggle for justice in the use of the injunction writ until Congress and the courts fully recognize and safeguard those rights from all possible abuse.

The fight must also continue to uphold the right to boycott not because the workers have any particular love for the boycott. Indeed they have no more love for the boycott than for the strike.

Both are extreme measures of defense forced upon the workers at times by unjust conditions, for which there is no other remedy. The workers fully realize that the boycott and the strike are means to be used at times to maintain their rights and promote their welfare when seriously threatened by hostile, greedy, and unfair employers and no other remedy seems available. It is not the strike or the boycott itself which matters so much, as the recognition of the lawful right to employ either or both when necessary.

With the legal right to strike recognized by the courts and the power to strike unquestioned, we find those organizations of workers which are best organized and equipped to strike, successfully, have very few strikes. The trade agreement and mediation and voluntary arbitration have largely replaced the strike. The right and the power to strike have compelled fairer consideration, and hence

better conditions at the hands of otherwise hostile and inconsiderate employers.

So with the boycott, cleared of wrongful charges and misapprehension and recognized as a lawful right, we will find its use diminishing. It will be a power held in reserve and used only when no other remedy seems adequate.

Holding fast to what has been gained in this decision and appreciating to the full the breadth and clearness of many portions of these opinions, Labor will yet press forward unceasingly in its struggle for the recognition of all its just claims upon society. Labor will not rest satisfied until it secures complete disenfranchisement from every vestige of unjust discrimination. It will demand and secure equality before the law with all other citizens. The future is ours!

990 With the same reservation (made on page 2113), Mr. Ralston offered in evidence the following:

The Boycott—Judicial Opinion.

While the discussion of greater issues in the past year has tended to *regulate* to the background such rights as that of the boycott, yet I should be recreant in my duty were I to remain silent upon that subject, and thus, perhaps, strengthen an impression which has been assiduously given out by our opponents, that the boycott—that is, the right to withdraw patronage, to bestow it upon whom we please—has been withdrawn from the workers of the country during the legal proceedings in relation to the injunction secured by the Buck's Stove and Range Company.

It will be remembered that the injunction was sought primarily to restrain the people in their right to quit buying Buck's stoves and ranges. It over-reached itself so far that the right to freedom of speech and press became involved. However, no consideration of the injunction has been possible by the courts without taking up the principle involved in the boycott.

We have always held, and we still hold, that the workers, or any of the people, have the right to withhold or to bestow their patronage as they choose; that they have the right to advise friends and sympathizers of this action and of the reasons therefor. It is hardly necessary to state that in the case of the workers the unfair attitude of the dealer in question has always been the reason for withdrawal of patronage. It has been made clear that he refused to pay the standard rate of wages and to agree to other equitable conditions which the workers seek through their organizations, and hence the withdrawal of patronage. The boycotts declared by other citizens have sometimes been placed for other reasons, and they can safely be left to a defense of their own actions. I only wish to point out in passing that the boycott is by no means a weapon used by the workers alone. It is one of those inalienable rights which are at times used by all people. The right to withhold or bestow patronage is one of those things which can neither be enjoined, forbidden, nor punished.

Upon the workers and their organization, however, was made

the attempt to have the boycott declared unlawful and a conspiracy, and hence, subject to judicial decree and punishment.

In connection with the decree rendered by the Court of Appeals of the District of Columbia greatly modifying the original injunction issued by Justice Gould in response to the petition of the Buck's Stove and Range Company, the following judicial opinions on the boycott should receive especial attention. It is not that they enunciate anything new or different from the views held and declared by our Federation, but it is a marked step in advance when a judge here and there shows by his opinion that he has escaped from the shades of mediævalism and has given to modern industrial conditions the reasonable and logical study which they require.

Justice Van Orsdel, in speaking of the boycott, says in his decision modifying the Buck's Stove and Range Company injunction:

"I conceive it to be the privilege of one man, or a number of men, to individually conclude not to patronize a certain person or corporation. It is also the right of these men to agree together, and to advise others, not to extend such patronage. That advice may be given by direct communication or through the medium of the press, so long as it is neither in the nature of coercion or a threat.

"As long as the actions of this combination of individuals are lawful, to this point it is not clear how they can become unlawful because of their subsequent acts directed against the same person or corporation."

Again he says:

"It is not unlawful for citizens to organize together for any of the main purposes for which the American Federation of Labor exists. It is not unlawful for that order to have an official organ; it is not unlawful for that organization, through the medium of that organ, to express freely its opinion as to the fairness or unfairness with which certain employers deal with their employes; and it is not unlawful for the paper to contain advice to the friends of labor not to patronize such employer.

"Again, we do not assume that it will be contended that a citizen has not perfect freedom to deal with whom he pleases, and withhold his patronage for any reason that he may deem proper, whether the reason be one originating in his own conscience, or through the advice of a neighbor, or through the reading of an article in a paper. Neither would it be unlawful for such citizen to advise

another not to deal with a person with whom he has concluded not to continue his patronage. If this advice may extend to one, it may to a hundred; and the thing done will not be actionable so long as it is an expression of honest opinion and not slanderous, however much the intercourse between this citizen and his neighbor may operate to injure the person against whom the advice is directed. As long as confined to a mere expression of opinion as to the fairness or unfairness of a business transaction, it is not actionable."

In another portion of his opinion he says:

"So long, then, as the American Federation of Labor, and those acting under its advice, refused to patronize complainant, the com-

bination had not arisen to the dignity of an unlawful conspiracy or a boycott."

It is to be regretted that the whole opinion can not be quoted here. The extracts are given, not with any desire to detach them from the accompanying text of the opinion, but in order to call attention to some of the more important remarks in regard to the use of the boycott. And it must be borne in mind that the opinions just quoted are from the judge who voted to sustain the injunction, though in modified form.

Justice Shepard dissented from his colleagues in that he believed that the right to boycott should be conceded to the following extent:

"I can not agree to the terms of the decree as modified. In my opinion, it should be modified so as to restrain the acts, only, by which other persons have been, or may be coerced into ceasing from business relations with the Buck's Stove and Range Company; but so as not to restrain the publication of the name of that company in the 'We Don't Patronize' columns of the American Federationist, no matter what the object of such publication may be suspected or believed to be.

* * * * *

"One person may not only cease to labor for another without liability to action, but may also cease or decline to further purchase his goods, or to have any business relations with him.

"This being lawful for one person to do, does not become unlawful when two or more persons, impelled by a like motive, voluntarily agree to do the same thing. Consequently, the persons composing the organization of the Federation of Labor have a legal right to agree together not to purchase the goods of the Buck's Stove and Range Co. Refusing to purchase those goods does not constitute a 'boycott' in the legal sense.

* * * * *

"So long, therefore, as the members of the Federation of Labor contented themselves with refusing to purchase the goods of the Buck's Stove and Range Co. from it or from others their combination was not illegal."

It is regrettable that, although expressing opinions like these quoted, so in harmony with all principles of justice and right, all three justices of the Court of Appeals seemed not to have informed themselves as to the facts relating to the boycott in question. They all assumed wrongly that there had been "conspiracy" or "coercion" in order to force innocent, timid parties against their will to cease dealing with a firm. It is well-known to all men of labor that such tactics have never been used; had they been attempted our Federation would be the first to call a halt and to endeavor by every means in its power to punish such action and to dissuade those mistaken from attempting such a course; but the general public has been misled and some portion of it at least made to believe in the bugaboo of "conspiracy" in relation to a concerted withdrawal of patronage.

It is necessary that our members should take pains to inform the

general public of this judicial expression of opinion. It should be given the widest possible circulation.

The fight must continue to uphold the right to boycott not because the workers have any particular love for the boycott. Indeed, they have no more love for the boycott than for the strike. Both are extreme measures of defense forced upon the workers by unjust conditions. The workers fully realize that the boycott and the strike are means to be used to maintain their rights and promote their welfare when seriously threatened by hostile, greedy, and unfair employers when no other remedy seems available. It is not the strike or the boycott itself which matters so much, as the recognition of the lawful right to employ either or both when necessary.

With the boycott, cleared of wrongful charges and misapprehension and recognized as a lawful right, we will find its use diminishing. It will be a power held in reserve and used only when no other remedy is adequate.

991

MARCH 6, 1912.

Mr. Ralston presented to the Court, handing a copy to the stenographer so that it might be incorporated in the record, the following letter from Mr. John Mitchell, one of the respondents.

"John Mitchell, 3 Claremont Avenue.

"MOUNT VERNON, N. Y., *February 17, 1912.*

"Hon. Daniel Thew Wright, Associate Justice Supreme Court of the District of Columbia, Washington, D. C.

"SIR: At the close of my cross examination in the contempt proceedings instituted against Mr. Gompers, Mr. Morrison and me, the Court stated that I was free, at any time before these proceedings close, to give expression to the Court, either orally or in written communication, upon the subject of the following recommendation.

"The Court strongly recommends that you consider again the propriety of acquainting the Court, before these proceedings close, with your conviction whether you expect hereafter to lend adherence to the decrees of the judicial tribunals of the land in matters committed by law to their jurisdiction and power."

"I have given the Court's recommendation careful thought and serious consideration, as a result of which I desire to say that I believe a statement by me that I 'expect hereafter to lend adherence to the decrees of the judicial tribunals of the land', would be subject to no other interpretation than that I had heretofore failed or refused to comply with the lawful decrees of the courts and that my evidence in this proceeding was not truthful and sincere and in keeping with the facts in the case. I am not willing to make any statement that would impugn my own testimony. I am not willing by any device or subterfuge to attempt to deceive the Court or secure an acquittal by any other means than those of the evidence and the truthfulness of my testimony.

"Indeed, I should feel more contentment if convicted conscious of the rectitude of my course and truthfulness of my evidence, than if acquitted on any other ground than the facts as they have been presented to the Court and the law as it has been enunciated by the higher tribunals.

Very respectfully,
(Signed)

JOHN MITCHELL."

992

MARCH 11, 1912.

(Page 2153.) Mr. Ralston for the respondents stated upon the hearing of the cause that there was at least one general exception presented on behalf of the respondents and that related to the question of the statute of limitations, and it was the understanding that the testimony was taken subject to respondents' exception and objection.

(Page 2183.) Mr. Ralston moved to quash the proceedings for the reason that they were in equity, and that there was no equity court having any power to conduct a proceeding of this sort, it being contended that proceedings of this kind were criminal proceedings, which motion was overruled by the Court, and an exception then and there noted.

(Page 2185.) Mr. Davenport referred to the fact that counsel had called attention of the Court to his statement in the record that any objection taken on behalf of any of the respondents, applied to all, and said that the statement went further and provided that any testimony given by any witness should apply to all of the respondents in so far as applicable; that the case had been presented under different headings, and three copies of the testimony filed entitled in the several cases of Morrison, Gompers and Mitchell, the statement being that any part of the testimony applicable to each or either of the respondents should be considered in so far as it related to him.

993 On July 23, 1912, counsel for respondent, John Mitchell, presented to the Court the following agreement:

"Now comes John Mitchell, respondent in the above entitled cause, and showing to the Court that he is at this time at a great distance from the City of Washington, D. C., and that an attendance there at this time would be the occasion of serious inconvenience to him, requests that the sentence to be imposed upon him in the above entitled cause may be imposed without requiring his personal presence, he hereby waiving, so far as the imposition of sentence is concerned, any right upon his part to be present at the time of its imposition, and stipulates that it shall have the same force and effect as if he were personally present.

JOHN MITCHELL,
Respondent."

Whereupon the Court announced its judgment that the respondent be imprisoned in jail for a period of nine months, to which sentence and judgment of the Court the respondent, John Mitchell, by his attorney, then and there, in open court, reserved

an exception and noted an appeal. There are also made a part of this Bill of Exceptions the several orders of court contained in the transcript of record, at the foot or in the body of which are noted the taking and granting of exceptions to their passage.

And the respondents pray the Justice presiding in said trial to sign and seal this case and bill of exceptions combined, which is accordingly done now for them, this 4th day of October, 1912.

DAN THEW WRIGHT,

Justice Supreme Court D. C.

994

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 993, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 30180, in Equity, entitled In the Matter of Samuel Gompers, John Mitchell and Frank Morrison, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 29th day of October, 1912.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2477. Samuel Gompers et al., appellants, vs. United States. Court of Appeals, District of Columbia. Filed Oct. 30, 1912. Henry W. Hodges, clerk.

TUESDAY, *February 25th, A. D. 1913.*

No. 2477.

SAMUEL GOMPERS, JOHN MITCHELL, and FRANK MORRISON,
Appellants,
vs.
UNITED STATES.

On motion of Mr. J. H. Ralston, of counsel for the appellants, the said appellants are allowed to file a supplemental brief herein, with leave to the appellee to reply thereto if so advised.

The argument in the above entitled cause was commenced by Mr. Alton B. Parker, attorney for the appellants, and was continued by Mr. J. H. Ralston, attorney for the appellants.

On motion of Mr. Alton B. Parker, the appellants are allowed to file printed copies of the argument herein.

WEDNESDAY, *February 25th, A. D. 1913.*

No. 2477.

SAMUEL GOMPERS, JOHN MITCHELL, and FRANK MORRISON,
Appellants,
vs.
UNITED STATES.

The argument in the above entitled cause was continued by Mr. J. H. Ralston, attorney for the appellants, and by Messrs. C. R. Wilson, J. J. Darlington, and Daniel Davenport, attorneys for the appellee, and by Mr. J. H. Ralston, attorney for the appellants, and was concluded by Mr. Alton B. Parker, attorney for the appellants.

IN re SAMUEL GOMPERS, JOHN MITCHELL, and FRANK MORRISON.

Opinion.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This is an appeal from three separate judgments of the Supreme Court of the District of Columbia adjudging appellants, Samuel Gompers, John Mitchell, and Frank Morrison, respectively, guilty of contempt of court. The cases were tried together, and, by stipulation, brought here upon the same record. The appellants will be referred to hereafter as respondents.

It appears that on the 19th day of August, 1907, a bill in equity was filed in the Supreme Court of the District of Columbia by the Buck's Stove and Range Company, a corporation, of St. Louis, Mo., praying for an order of injunction to restrain the American Federation of Labor and certain persons, among whom were these respondents, from conducting a boycott against the business of said company. On the 18th day of December, 1907, a temporary restraining order, which is inserted in the margin, was entered by the court.

"This cause coming on to be heard upon the petition of the complainant for an injunction pendente lite as prayed in the bill, and the defendants' return to the rule to show cause issued upon the said petition having been argued by the solicitors for the respective parties, and duly considered, it is thereupon, by the court, this 18th day of December, A. D. 1907, ordered that the defendants, the American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper, and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing, or combining in any manner to restrain, obstruct, or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants or by any other person, firm, or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm, or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing or distributing through the mails or in any other manner any copies or copy of the American Federationist, or any other printed or written newspaper, magazine, circular, letter or other

The indemnifying bond required by the court to be given by the complainant company was filed on December 23, 1907. The temporary order of injunction was made permanent as to the original defendants on March 23, 1908. From the order making the injunction perpetual, an appeal was taken to this court. No supersedeas bond was given, nor any action taken by defendants to stay the judgment. This court modified the decree of the court below. *American Federation of Labor v. Buck's Stove & Range Co.*, 33 App. D. C., 83. On application of the appellant Federation of Labor, the mandate was stayed pending an appeal to the Supreme Court of the United States. Before the case came on for hearing in that court, the differences between the parties to the injunction proceeding were settled, and the appeal was finally dismissed. Inasmuch as the decree as modified by this court was never certified back to the Supreme Court of the District for entry, the original order of injunction remained in full force until the date of settlement, July 20, 1910.

Contempt proceedings for the violation of the order of injunction were originally instituted against these respondents on July 20, 1908. From a judgment of conviction appeal was taken to this court, where the judgment of the court below was affirmed. *Gompers et al. v. Buck's Stove & Range Co.*, 33 App. D. C., 516. The case was taken to the Supreme Court, where the judgment was reversed, "and the case remanded with directions to reverse the judgment of the Supreme Court of the District of Columbia and

document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business, or its product in the 'We Don't Patronize' or the 'Unfair' list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business, or product in connection with the term 'Unfair' or with the 'We Don't Patronize' list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention of complainant's customers, or of dealers, or tradesmen, or the public, to any boycott against the complainant, its business, or its product, or that the same are, or were, or have been declared to be 'unfair,' or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling, or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to com-

remand the case to that court with direction that the contempt proceedings instituted by the Buck's Stove and Range Company be dismissed, but without prejudice to the power and right of the Supreme Court of the District of Columbia to punish by a proper proceeding, contempt, if any, committed against it. *Gompers et al. v. Buck's Stove & Range Co.*, 221 U. S., 418.

On May 16, 1911, cognizance of the alleged contempt was again taken by the Supreme Court of the District of Columbia by the appointment of J. J. Darlington, Daniel Davenport, and James M. Beck, members of the bar of the Supreme Court of the District, to inquire whether reasonable cause existed to believe respondents guilty of contempt, and, if so, to prepare, file, present, and prosecute against them "charges of contempt of court; to the end that the authority of the court be established, vindicated and sustained." The court subsequently added to this committee Clarence R. Wilson, United States Attorney for the District of Columbia. The committee, on June 26, 1911, filed a separate sworn report as to each respondent charging him with contempt of court.

Respondent Gompers is accused of violating the temporary and perpetual orders of injunction in sixteen separate charges, the material part of which is printed in the margin.

Respondent Morrison is charged, as Secretary of the American Federation of Labor, with receiving and having in his custody and circulating the reports of the Norfolk Convention; of joining with the other respondents in sending out the "Urgent Appeal," with the editorial of Gompers thereto attached, and of circulating the Ameri-

mittees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other States and Territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting, or abetting any person or persons, company, or corporation to do or cause to be done any of the acts or things aforesaid.

"And it is further ordered by the court that this order shall be in full force, obligatory and binding upon the said defendants, and each of them, and their said officers, members, agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them upon the service of a copy hereof upon them or their solicitors or solicitor of record in this case. Provided the complainant shall first execute and file in this cause, with surety or sureties to be approved by the court or one of the justices thereof, an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitably suing out this injunction, and stipulating that the damages may be ascertained in such manner as the justice of this court shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

(Signed)

ASHLEY M. GOULD, *Justice.*"

can Federationist for the months of January, February, March, April, May, June, and September, 1908, containing the editorial and other matter relating to the Buck's Stove and Range Company, as set forth in the various charges against the respondent Gompers.

Respondent Mitchell, as vice-president of the American Federation of Labor, is charged with the other respondents of publishing and circulating the "Urgent Appeal," with the Gompers editorial, and of presiding over the annual convention of the United Mine Workers of America in January, 1908, when a resolution was introduced and adopted imposing a fine of \$5 upon any member of the union who should purchase the product of the Buck's Stove and Range Company, and providing that for failure to pay the fine, the member should be expelled from the union. He is also charged with using the following language in a speech delivered before the annual convention of the United Mine Workers of America in January, 1909: "The court says further that I presided as president of the United Mine Workers at a convention here in which a resolution was passed violating that injunction. There are no doubt in this convention hundreds of delegates who were here a year ago who know that I had no knowledge that the resolution was to be introduced. They know I had nothing to do with its preparation, with its consideration, or its introduction. It came to us as all other resolutions did. As chairman, what was I to do? I had, it is true, three alternatives. I might have resigned the presidency of the United Mine Workers of America; I might have been cowardly and

"There is reasonable cause to believe, and it is hereby charged that the said Samuel Gompers was guilty of contempt in wilfully violating the terms of the said injunction in the following particulars:

"1. After passage by the court of its said decree of injunction of December 18, 1907, and the knowledge of it upon the part of the said Samuel Gompers, he caused a large number, to wit, more than 10,000 copies of the January, 1908, number of the American Federationist, which was the official journal of the American Federation of Labor and of which he was the editor, to be issued and published in advance of its usual date of issue, for the express and admitted purpose on his part to anticipate the filing of the required injunction undertaking, in which January, 1908, issue of the said Federationist, the name of the Buck's Stove & Range Company was published as he well knew, in the 'We Don't Patronize' or 'Unfair' list of the American Federation of Labor. A large number, to wit, many thousands of copies of the said January, American Federationist, were wilfully caused and procured by the said Samuel Gompers to be deposited in the United States mails, on the day immediately preceding the filing of the said undertaking, while many other thousands of copies of this said publication were by him wilfully caused and procured to be delivered to the American News Company as his agent, or as the agent of his co-defendant, the American Federation of Labor, of which he was president, for the purpose on his part of being distributed to the public, which distribution by his said agency and agencies he wilfully took no steps to stop or have discontinued after knowledge by

called some one else to the chair and let him accept the responsibility—asked someone else to accept the responsibility of what I dared not do myself, or I might have accepted the last alternative. I might have stood up before you, and advocated the cause of a company which was having trouble with its employees. Does the man who respects me least imagine for a moment I would become the advocate and defender of a company that was at variance with its employees? Would I stand here and fight the cause of a corporation that was trying to destroy the unions in its employment? What could I do? What could any self-respecting man do? Would he not have done as I did? It is true that, technically, I was guilty of violating the injunction when I presided over the meeting that adopted this resolution, but I am no more guilty than any other man who was present in the convention at that time. Indeed, I presume that before a jury I would be considered less guilty, because I did not vote for it, and every one else did. I did not vote for it because I was presiding."

The respondents filed separate pleas, in which they pleaded not guilty, the bar of the statute of limitations, laches and unreasonable delay in the presentation of the charges. They were tried before five of the six judges of the Supreme Court of the District of Columbia, and were each found guilty of contempt of court, and sentenced to imprisonment in jail—Gompers for one year Mitchell for nine months, and Morrison for six months. From the judgments, separate appeals have been prosecuted, but by stipulation in a single bill of exceptions.

him of the giving of the said injunction bond, and that the injunction granted by the court had thereby become technically operative and effective. The said Samuel Gompers wilfully hurried, and in the said equity cause expressly admitted that he hurried, the issue of the January, 1908, number of the Federationist, for the express purpose of getting it out before the undertaking was filed; he hurried up the issue because of the possibility that the complainant would give the undertaking that his purpose was to affect the complainant's business by influencing his fellow-workmen, and the labor unions to prevail upon the complainant to come to an agreement, that he hoped to lessen its business until he did come to such an agreement, which was the purpose of the boycott (that he anticipated that the injunction would soon become operative, and was diligent to see that the issue was distributed before it was done, and that for this purpose he placed a large number of copies in the hands of the Washington News Company for distribution, neither informing that company that the injunction order had been signed and might become operative, nor taking any steps to prevent it from circulating the copies after he learned that the injunction undertaking had been given; that he had hurried the issue because he wished to get the issue out before the injunction became operative in order that the complainant's name might continue to be published in connection with the 'We Don't Patronize' caption without the interference of any one, including the court, and that he did so hoping, and with the purpose,

We will first consider the assignments of error challenging the sufficiency of the evidence to support the judgments finding respondents guilty of contempt. The commission of the acts charged are not denied; but the defense is interposed in each case that the acts were not committed with intent to disobey the injunction, and further that there is no evidence that the boycott was continued after the temporary order of injunction became effective. In answering these objections, it is proper to examine the order of injunction to ascertain the extent to which respondents were by its terms restrained. It is not important that the order was modified by this court. Our order, as suggested, never became effective, and, however erroneous the original orders may have been, it was not for respondents to determine that fact, but for the proper appellate tribunal in the orderly and prescribed course of procedure. "The preliminary injunction was in force until set aside." *Worden v. Seales*, 121 U. S., 14, 27. "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls 'the judicial power of the United States' would be a mere mockery." *Gompers et al. v. Buck's Stove & Range Co.*, 221 U. S., 418, 450.

The contention of respondents that the injunction was void, in that it abridged the right of free speech and the freedom of the press, was held to be unfounded by this court, which holding was approved by the Supreme Court of the United States. 33 App.

that the effect might lessen the business of the complainant until it came to such an agreement, which was the original purpose of the boycott.

"II. After the filing of the said injunction undertaking, and knowledge thereof upon the part of the said Samuel Gompers, he wilfully caused and permitted the further circulation, both through the United States mails and otherwise, of the said January, 1908, number of the *American Federationist*, containing the name of the Buck's Stove & Range Company in the 'We Don't Patronize' or 'Unfair' list of the American Federation of Labor, as he at the time well knew and for the circulation of which journal he admitted in the said equity cause that he was responsible.

"III. On and after the 23d day of December, 1907, the said Samuel Gompers, who was both the president and the general representative of the American Federation of Labor wilfully caused and permitted to be publicly circulated a large number, to wit, several thousands of copies of the printed proceedings of the convention of the said American Federation of Labor held at Norfolk, Va., in the month of November, 1907, which printed proceedings, so by him caused and permitted to be published and circulated, not only contained and referred to the name of the Buck's Stove & Range Company, its business and product in connection with the 'We Don't Patronize' or 'Unfair' list of the said American Federation of Labor, as he at the time knew, but, in addition thereto, contained the following, as he then knew:

D. C., 516; 221 U. S., 418. It, therefore, was incumbent upon respondents to obey the injunction, until vacated or modified by proper authority, and until such order of vacation or modification should become effective.

Respondents were not restrained alone from continuing the boycott, but they were forbidden to print, issue, publish or distribute, through the mails, or otherwise, any written or printed document whatever containing any reference to the Buck's Stove and Range Company's business or its product, as on the "We Don't Patronize" or "Unfair" list, or to make any reference to its business or product in connection with those terms, or to make any statement orally or in writing calling attention to the fact that a boycott had been waged against its business or its product or that it had been declared to be unfair, or that its product should not be purchased, dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or to make any representation or statement for the purpose of interfering with the business of the Buck's Stove and Range Company or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, firm, or corporation or the public not to purchase, use, buy, trade in, deal in or have in possession any of its products.

To establish the guilt of respondents, it is not even necessary to invoke the familiar rule that every person is presumed to intend the natural and necessary consequences of his own acts. While the reports, editorials, and speeches published and circulated broadcast

"(a) A report by the said Samuel Gompers to the said convention of the American Federation of Labor containing inter alia the following:

"Recently one of the branches of the Federal courts decided by a majority vote that the boycott is illegal. * * * We should demand the change of any law which curbs the privilege and the right of the workers to exercise their normal and natural preferences. In the meantime we should proceed as we have of old, and, wherever a court shall issue an injunction restraining any of our fellow-workers from placing a concern hostile to labor's interests and themselves on our Unfair list, and enjoining the workers from issuing notices of this character, the further suggestion is made that upon any letter or circular issued upon a matter of the character, after stating the name of the unfair firm and the grievance complained of the words, "We have been enjoined by the courts from boycotting this concern," could be added with advantage."

"(b) An editorial written and published by the said Samuel Gompers, and of which he wilfully had more than 30,000 copies distributed all through the country, which said editorial was originally published in the February, 1908, issue of the American Federationist, containing, inter alia the following:

"Justice Gould, of the Supreme Court of the District of Columbia, issued an injunction, on December 18, 1907, against the American Federation of Labor and its officers, and all persons within the jurisdiction of the court,

could have been intended only to accomplish the result of preventing the members of the American Federation of Labor and their friends, dealers, and the public generally from purchasing or dealing in the products of the Buck's Stove and Range Company, the utterances in themselves, regardless of their effect, constituted a violation of the express terms of the court's decree. That respondents did not intend to respect the order of the court is apparent from the following extract from the report of Gompers made to the Norfolk Convention, which occurred between the date of the filing of the bill and the making of the temporary order, and which was published and circulated after the order became effective: "Recently one of the branches of the Federal courts decided by a majority vote that the boycott is illegal. * * * We should demand the change of any law which curbs the privilege and the right of the workers to exercise their normal and natural preferences. In the meantime, we should proceed as we have of old, and, wherever a court shall issue an injunction restraining any of our fellow-workers from placing a concern hostile to labor's interests and themselves on our 'Unfair' list, and enjoining the workers from issuing notices of this character, the further suggestion is made that upon any letter or circular issued upon a matter of this character, after stating the name of the unfair firm and the grievance complained of the words, 'We have been enjoined by the court from boycotting this concern' could be added with advantage."

That the terms of the injunction were well understood appears

"This injunction enjoined them as officers, or as individuals, from any reference whatsoever to the Buck's Stove & Range Company's relations to organized labor, to the fact that the said company is regarded as unfair; that it is on an "unfair" list, or on the "We Don't Patronize" list of the American Federation of Labor. The injunction orders that the facts in controversy between the Buck's Stove and Range Co. and organized labor must not be referred to, either by printed or written word or orally. The American Federation of Labor and its officers are each and severally named in the injunction. This injunction is the most sweeping ever issued.

"It is an Invasion of the Liberty of the Press and the Right of Free Speech.

"On account of its invasion of these two fundamental liberties, this injunction should be seriously considered by every citizen of our country.

* * * * *

"With all due respect to the court it is impossible for us to see how we can comply with all the terms of this injunction. We would not be performing our duty to labor and to the public without discussion of this injunction. A great principle is at stake. Our forefathers sacrificed even life in order that these fundamental constitutional rights of free press and free speech might be forever guaranteed to our people. We would be recreant to our duty did we not do all in our power to point out to the people the serious invasion of

from the editorial of Gompers published and circulated shortly after the decree was entered, wherein he stated: "This injunction enjoined them as officers, or as individuals, from any reference whatsoever to the Buck's Stove & Range Company's relations to organized labor, to the fact that the said company is regarded as unfair; that it is on an 'unfair' list, or on the 'We Don't Patronize' list of the American Federation of Labor. The injunction orders that the facts in controversy between the Buck's Stove & Range Co. and organized labor must not be referred to, either by printed word or orally. The American Federation of Labor and its officers are each and severally named in the injunction. * * * With all due respect to the court, it is impossible for us to see how we can comply with all the terms of this injunction. We would not be performing our duty to labor and to the public without discussion of this injunction. * * * The publication of the Buck's Stove & Range Co. on the 'We Don't Patronize' list of the American Federation of Labor is the exercise of a plain right. To enjoin its publication is to invade and deny the freedom of the press—a right which is granted under our Constitution. * * * The members of organized labor are not themselves obliged to refrain from dealing with the firms on the 'We Don't Patronize' list of the American Federation of Labor. The information is given them. There is no compulsion. They are entirely free to use their own judgment." This editorial was published and sent out with the "Urgent Appeal," which was issued by the joint action of all the respondents. It

their liberties which has taken place. That this had been done by judge-made injunction and not by statute law makes the menace all the greater.

* * * * *

"The publication of the Buck's Stove and Range Co. on the "We Don't Patronize" list of the American Federation of Labor is the exercise of a plain right. To enjoin its publication is to invade and deny the freedom of the press—a right which is guaranteed under our Constitution.

* * * * *

"The matter of attempting to suppress the boycott of the Buck's Stove and Range Co. by injunction, while important, yet pales into insignificance before this invasion and denial of constitutional rights.

* * * * *

"The members of organized labor are not themselves obliged to refrain from dealing with the firms on the "We Don't Patronize" list, of the American Federation of Labor. The information is given them. There is no compulsion. They are entirely free to use their own judgment.

* * * * *

"No person can be compelled to buy an article. If the purchaser

therefore, may be regarded as their expression, for which they are each to be held responsible.

It must be remembered that we are here dealing with a conspiracy, which was formed for the purpose of compelling the Buck's Stove and Range Company to accept labor's terms or submit to the destruction of its business. The two million members of the American Federation of Labor and their friends were enlisted in this cause. The leaders, through their official organs, had signals which were well understood by every one connected with the organization. As this court said in the injunction case (33 App. D. C., 83), referring to the "We Don't Patronize" or "Unfair" list: "The court below found, and in that finding we concur, that this list in this case constitutes a talismanic symbol indicating to the membership of the Federation that a boycott is on and should be observed." In the former case (33 App. D. C., 573) we said: "The mere mention of complainant's name by these leaders in the columns of the Federationist or on the public platform in connection with the expressions 'Boycott,' 'Unfair,' or 'We don't patronize,' might tend to influence many to disregard the decree of the court, and thus become as effective notice to their followers as it had formerly been when published in the 'Unfair' or 'We Don't Patronize' list." A similar comment appears in the opinion of the Supreme Court (221 U. S., 439) as follows: "In the case of an unlawful conspiracy, the agreement to act when the signal is published, gives the words 'Unfair,' 'We Don't Patronize,' or similar expressions, a force not inhering in

chooses to let alone certain products for any reason or for no reason there is no way of compelling him to buy.

"This injunction can not compel union men or their friends to buy the Buck's stoves and ranges. For this reason the injunction will fail to bolster up the business of this firm which it claims is so swiftly declining.

"Individuals as members of organized labor will still exercise the right to buy or not to buy the Buck's stoves and ranges. It is an exemplification of the saying that, "You can lead a horse to water, but you can't make him drink," and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not purchase the Buck's stoves and ranges.

"It may not be amiss here to say that in all these proceedings, whether before the court or in the contest forced upon labor by the Buck's Stove and Range Co., no element of personal malice or ill-will enters. Labor is earnestly desirous of entering into friendly relations with employers, and this is none the less true of its desire to reach an honorable adjustment and agreement with the Buck's Stove and Range Co. So long, however, as that Company continues in its hostile attitude to labor, denying it the right to organize, discriminates against union members, and refuses to accord conditions of employment generally regarded as fair in the trade, it must expect retaliatory measures; these measures always, however, within the law and for the purpose of ultimately reaching an honorable, mutually advantageous agreement.

the words themselves, and, therefore, exceeding any possible right of speech which a single individual might have. Under such circumstances they become what have been called 'verbal acts,' and as much subject to injunction as the use of any other force whereby property is unlawfully damaged. When the facts in such cases warrant it, a court having jurisdiction of the parties and subject-matter has power to grant an injunction."

The only way to enjoin a boycott of this sort is to prohibit the utterance and publication of the signals, as was done in this case. But, as disclosed by this record, the campaign never ceased. While the name of the Buck's Stove and Range Company was taken from the "We Don't Patronize" or "Unfair" list, the fact that it was still to be treated as on the list was heralded through the Federationist and other mediums. It was unnecessary to prove that the boycott continued after the injunction became effective. If it did not, it was not the fault of respondents. They furnished the material to keep the machinery in operation; and therein was the contempt. The result might be presumed, if essential to the determination of the question before us.

In Mitchell's case, by his own admission made one year after the commission of the act, he was a direct participant in continuing the boycott. Referring in the former opinion (33 App. D. C., 574) to his presiding over the annual convention of the United Mine Workers when the resolution set out in the report was adopted, the court said: "The adoption of this resolution could accomplish but

"The publication of the Buck's Stove and Range Co. on the "We Don't Patronize" list of the American Federation of Labor is only an incident in the history of the case. These stoves might have been let as severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing that firm from the list against which we primarily protest; it is this injunction invading the freedom of the press."

"Justice Gould, in one portion of his opinion, says: "Defendants (the American Federation of Labor) have the right either individually or collectively to sell their labor to whom they please, on such terms as they please, and decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves." (Heavy type and brackets are ours.)

"Here he states precisely the whole case of the American Federation of Labor. This is what we have done. This is the sum total of labor's offending. The publication of the Buck's Stove and Range Co. and other firms on the "We Don't Patronize" list is merely giving truthful information at the request of our members as to whether or not certain firms employ union men and concede the other conditions of employment usually granted by those concerns which recognize union labor.

"It would seem that having made the above quoted statement, Justice Gould would have found in it the reason for a refusal to issue the injunction. He, however, goes on to assume that there has been some unwarrantable interference with the plaintiff's business, though

one end—the perpetuation and continuation of the boycott. A labor organization can conduct an unlawful boycott as effectually by compelling its own members to refrain from dealing with the party boycotted, as by coercing others into similar action.”

Error is assigned “in receiving improper testimony over the objection of the respondents as shown by the bill of exceptions herein,” and “in excluding proper testimony offered on behalf of the respondents as shown by the bill of exceptions herein.” Whether objectionable testimony was admitted is not before us upon specific assignments of error. The judgment finding respondents guilty of contempt is general, unaccompanied by any finding of fact; hence, it is unnecessary to examine each particular charge, if it appears that in each case there is sufficient proof to support the judgment. *Classen v. United States*, 142 U. S., 140. The case having been tried to the court, it will be presumed that only competent evidence was considered in making up the judgments, and of such the record discloses sufficient to support the judgment of guilt in each instance. Besides, the trial court is the proper tribunal to determine the weight of the evidence. So far as objections and exceptions to the admission or rejection of evidence appear, the record discloses loose practice. If, however, any objections were so preserved as to be available for review in this court, respondents in the absence of specific assignments of error, will be deemed to have waived them. The assignments of error touching this matter are so indefinite that counsel did not seem to consider them of sufficient importance to

neither in his opinion nor in the injunction itself does he make it clear how he arrived at the conclusion that the union course was any other than as indicated in his own language.”

“IV. Following the injunction order of December 18, 1907, an opinion by one of the counsel for the complainant in the said equity cause had been published to the effect that, although the order of the Supreme Court of the District of Columbia to punish for contempt of court was limited to such persons as it might at any time find within the territorial limits of the District of Columbia, the decree was binding upon all persons comprised within its terms, wherever they might reside, and that it was a criminal offense under the statutes of the United States, punishable by imprisonment in the penitentiary, for any two or more persons anywhere in the United States to conspire together to evade or defeat the decree by doing any of the acts prohibited by it, and that such persons were liable to prosecution therefor by the Federal authorities. Thereupon the said Samuel Gompers published in the February, 1908, number of the *American Federationist*, a copy of the decree of injunction, prefacing it, in large type, with an editorial written by him as follows:

“Order Granting Injunction.

“In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove and Range Company,

call for argument at bar. They may be presumed, therefore, to have been abandoned.

The assignments relating to the bar of the statute of limitations will now be considered. The charge is for criminal contempt, *Gompers et al. v. Buck's Stove and Range Co.*, 33 App. D. C., 516; 221 U. S., 418. The question at once arises whether criminal contempt is a crime within section 1044 of the Revised Statutes of the United States, which provides: "No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section one thousand and forty-six, unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed."

Does the report of the committee in this case rise to the dignity of a criminal information? If it does not, it can not be embraced within the statute of limitations. At common law, informations were of two kinds—those filed *ex officio* by the attorney general, and those prosecuted by leave of court in the name of the coroner or master of the crown office. 1 Chitty, *Crim. L.*, 843. The abuses in the Star Chamber originated out of the latter class, which have never existed in this country. 1 Bish. *New Crim. Pro.*, sec. 143. Criminal informations in this country are the same as were presented in England by the attorney general or, in his absence, by the solicitor general. They differ from indictments only in being presented by the attorney-general in England, or the district attorney in this country, instead of by a grand jury. In *Goddard v.*

declares that punishment for violation of the injunction issued by Justice Gould, against the American Federation of Labor, applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation of Labor assure us that this construction of the court's order is accurate.

"The object of the foregoing editorial was, and the said Samuel Gompers expressly admitted it was, to inform the local unions so that they might know 'what they might do, and what they might not do;' that the information he wished to convey was that those who violated the injunction could be punished only in case they thereafter came in the said District, and that he thought the opinion of the complainant's counsel would be valuable to the working people, so that they might be guided by it.

"The publication of the said editorial was immediately followed by articles and editorials in the various journals, magazines or organs published by or in the interest of the numerous affiliated bodies composing the American Federation of Labor, of which the following are examples:

"'All the Justice Goulds, Buck's Stove and Range Company injunctions, and United States Supreme Court Judges, with their declarations of the Erdmann law as unconstitutional will some day be in

State, 12 Conn., 448, where a complaint had been filed by a tithing-man with a justice of the peace, charging a breach of the Sabbath, and the accused was convicted without a jury, as demanded by him, the court, in holding that the complaint was not a criminal information within the Bill of Rights, said: "If, then, the words indictment or information have a well-known meaning at the common law, we are to inquire not merely whether this complaint is not much like an information, but whether it is the information of the common law. An information differs from an indictment in little more than the source from which it comes. And a complaint by a tithing-man or grand juror may, in its form, differ but little from the information of the attorney-general or the master of the crown office. But this fact will no more prove, that it is an information, than that the information of the attorney is an indictment. * * * It has been attempted by the counsel of the plaintiff in error, to show, that in its form and nature it partakes of the features of an information. And it is certainly true, that every accusation of one person by another to a magistrate, is information to that magistrate. But it is not, therefore, the information spoken of in the constitution, because it does not come from the source which gives it that character."

We think there is a well-defined distinction between a complaint and an information. A complaint may be made by a private person against an alleged offender, and may be used by the proper prosecuting officer as the basis for the filing of an information, or for presenting an indictment to the grand jury. The information

Heaven or H—, and trade unionism will still flourish so don't worry.'

"Neither Van nor his ally Judge Gould
And the combined forces of Hell,
Can bridle free speech in this country,
And the same old story will tell.'

"V. On or about the 24th day of January, 1908, the said Samuel Gompers wilfully united with Frank Morrison, John Mitchell, and others in printing and widely circulating a large number, to wit, many thousands of copies of a paper designated by them 'An Urgent Appeal for Financial Aid in Defense of Free Press and Free Speech,' and, also, caused the same to be printed in the February, 1908, American Federationist which 'Urgent Appeal' among other things, contained the following language as he then knew:

"To All Organized Labor, Greeting:

"Justice Gould, of the Supreme Court of the District of Columbia, has issued an injunction against the American Federation of Labor and its officers, officially and individually.

"The injunction invades the liberty of the press, the liberty of speech.

"It enjoins the American Federation of Labor, or its officers, from printing, writing, or orally communicating the fact that the Buck's Stove and Range Company has assumed an attitude of hostility toward labor, and that organized labor has made this fact

referred to in the statute of limitations is what is understood as a criminal information, and, in law, such an information can only originate from the officer charged with the prosecution of crime within the jurisdiction. The report of the committee in the present case meets none of the requirements of an information. It was only intended to present a state of facts to the court upon which it might proceed, if so advised. In contempt, the contemnor is brought into court by citation, and the proceeding then is most informal and in total disregard of many of the essential elements of criminal pleading. In the case of *In re Savin*, 131 U. S., 267, the charge of contempt was orally reported to the court, and written specifications, although demanded by the accused, were denied. On the subject of procedure in contempt the court said: "It is, however, contended that the proceedings in the district court were insufficient to give that court jurisdiction to render judgment. This contention is based merely upon the refusal of the court to require service of interrogatories upon the appellant, so that, in answering them, he could purge himself of the contempt charged. The court could have adopted that mode of trying the question of contempt, but it was not bound to do so. It could, in its discretion, adopt such mode of determining that question as it deemed proper, provided due regard was had to the essential rules that obtain in the trial of matters of contempt." What may be said of the procedure in contempt applies equally to disbarment and other matters within the inherent jurisdiction of the court. *Randell v. Brigham*, 7 Wall., 523. In

known, and asks our friends to use their influence and purchasing powers with a view of bringing about an adjustment of all matters in controversy between that company and organized labor. The injunction is of the most sweeping character, and it, as well as the suit in connection therewith, must of necessity be contested in the courts, though it reach the highest judicial tribunal of our country.

"With this is a reprint of an editorial from the February, 1908, *American Federationist*, entitled "Free Speech, Free Press, Invaded by Injunction against A. F. of L.—A Review and Protest." The editorial contains a full presentation of labor's position in regard to this injunction."

"The said Samuel Gompers, wilfully caused and assisted in causing to be reprinted, and to be circulated with the said 'Urgent Appeal,' and as a part thereof, thousands of copies of the said editorial contained in the February, 1908, *American Federationist*, referred to in Paragraph III of this report, and, further, wilfully caused and assisted in causing thousands of copies of the editorial prefixed to the copy of the injunction printed in the said February, 1908, number of the *American Federationist*, which editorial is set out in Paragraph IV of this report, to be reprinted for the purpose of circulation, and to be widely circulated throughout the various States and Territories of the United States in conjunction with the said 'Urgent Appeal,' for the purpose of suggesting to the two million members of the American Federation of Labor, and all persons in sympathy with them, that they might violate the said injunction of the court

the present case, the court issued citations, and the charges contained in the report were made the basis upon which respondents were tried. But while sufficient for contempt, it will not be contended that such a document could be distorted into a criminal information upon which a defendant could be prosecuted for a crime. "A proceeding for contempt is not a criminal case in the sense that all the provisions of our statutes in regard to criminal practice and procedure are applicable to it." *Hurley v. Commonwealth*, 188 Mass., 443.

Contempt of court is not a statutory crime in this country. The Federal courts have jurisdiction, only of such offenses as by statute are declared to be crimes. No jurisdiction exists over purely common law offenses. *United States v. Britton*, 108 U. S., 199; *United States v. Hudson*, 7 Cranch, 32; *United States v. Coolidge*, 1 Wheat., 415; *United States v. Eaton*, 144 U. S., 677. In *Manchester v. Massachusetts*, 139 U. S., 240, 262, the court said: "The courts of the United States merely by virtue of this grant of judicial power, and in the absence of legislation by Congress, have no criminal jurisdiction whatever. The criminal jurisdiction of the courts of the United States is wholly derived from the statutes of the United States."

In the decisions the courts have expressed a variety of views as to the nature of the action for the punishment of contempts. Some have held it to be a criminal proceeding, in that a penalty is attached; some have held it to be in the nature of a criminal pro-

ceeding and might defeat its object and purpose without danger of punishment, provided they were not, or should not come, within the territorial limits of the District of Columbia.

"VI. In the March, 1908, number of the *American Federationist*, the said Samuel Gompers published in the editorial columns the following:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

"VII. In the April, 1908, copy of the *American Federationist*, issued after the final decree of this court in the said equity cause in effecting making perpetual the injunction pendente lite granted by the court on December 1, 1907, the said Samuel Gompers wilfully published editorially the following:

"The temporary injunction issued by Justice Gould, of the court of equity, of the District of Columbia, in the (Van Cleave) Buck's Stove & Range Company of St. Louis, against the American Federation of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia.

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

"And in another column of the April, 1908, copy of the *Federationist*, the said Samuel Gompers published the following:

ceeding. Penalty and punishment are not alone sufficient to distinguish the proceeding as criminal. The action is *sui generis*, in a class by itself, partaking of some of the elements of both civil and criminal proceedings, but, strictly speaking, it is neither. It belongs to a class of proceedings inherent in the court, and deemed essential to its existence. It would hardly be held that a disbarment proceeding is criminal, although a severe penalty may be imposed; or that the power of a court to reprimand its officers for misconduct is a criminal proceeding, though the penalty imposed is humiliating and severe. These belong to a class of proceedings essential to the self-preservation of a court, and inherent in all courts, irrespective of their constitutional and statutory jurisdiction. Contempt, therefore, is without any particular form of action, and not subject to the limitations of procedure prescribed for the conduct of either civil or criminal actions.

While Congress has the power to declare an act in contempt of court a crime, it has never exercised this power. The power of the Federal courts to commit and punish for contempt is inherent in the court where the contempt occurs. *Ex parte Terry*, 128 U. S., 289. As was said in *Watson v. Williams*, 36 Miss., 331: "The power to fine and imprison for contempt, from the earliest history of jurisprudence, has been regarded as a necessary incident and attribute of a court, without which it could no more exist than without a judge. It is a power inherent in all courts of record, and co-existing with them by the wise provisions of the common law." This

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove & Range Company of St. Louis. Fellow-workers, be true and helpful to yourselves and to each other. Remember that united effort in the cause of right and justice must triumph."

"VIII. In a public address to a large audience of working people in the city of New York on April 19, 1908, the said Samuel Gompers said:

"They tell us that we must not boycott. Well, if the boycott is illegal, we won't boycott. But I have no knowledge that any law has been passed or any order issued by any court compelling us to buy, for instance, a range or a stove from the Buck's Stove and Range Company. You know that myself and several are enjoined from telling you, and we are not prepared to tell you that the Buck's Stove and Range Company is unfair. There are a number of men who have been having suit brought against them for two hundred and forty thousand dollars. That is not very much, between you and me; but a few hatters in Danbury, Connecticut, are unfair, I am not prepared to say that that is in violation—that they are unfair."

"Of course, in the case of the Buck's Stove and Range Company, if I told you that the Buck's Stove and Range Company was still unfair, when I got back to Washington tomorrow or some place where they say people play checkers with their noses—well, as I say, I am not prepared to tell you that these things are unfair. But there

statement of the law is quoted with approval in *In re Debs*, 158 U. S., 564. It is idle to assert that the power to punish for contempt of court is inherited from the common law. The power was inherent in the courts of the United States from their creation, and exists by virtue of their creation. It is not dependent upon precedent, origin, or custom, but would exist if this power had never been exercised by the courts of England. Section 725 of the Revised Statutes of the United States merely limits the inherent power of all courts of the United States to punish acts in contempt of their authority and prescribes the punishment that may be inflicted. *Pierce v. United States*, 37 App. D. C., 582; *Anderson v. Dunn*, 6 Wheat., 204; *Ex parte Robinson*, 19 Wall., 505; *Eilenbecker v. Plymouth Co.*, 134 U. S., 31.

All crimes punishable under Federal jurisdiction being statutory, it is important to consider what is embraced within the accepted use of the term "crime." It is not important that criminal contempts in isolated instances may have been tried by jury upon indictment and information prior to the time of Henry V. They have never been so tried in this country. The important question before us is whether, under the procedure adopted and followed in the Federal courts, contempts are within the classification of crimes as treated in the Constitution, statutes, and decisions of the courts. Article III of the Constitution of the United States provides that "the trial of all crimes, except in cases of impeachment, shall be by jury." The Fifth and Sixth Amendments to the Constitution

is no law, no court decision that compels you to buy them, nor does any law compel you to buy anything without the union label.'

"IX. In a public address delivered by the said Samuel Gompers before a large gathering of working people on or about the first day of May, 1908, in the city of Chicago, Ill., he said:

"I might say just parenthetically about the hatters' case, that you are not now permitted to boycott the Loewe hats, but I want to call your attention to the fact that there is no law compelling you to wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. That applies equally to Mr. Van Cleave's stoves and ranges. And by the way I don't know why you should buy any of that sort of stuff, I don't; but that is a matter to which we can refer more particularly in our organization.'

"X. In the July, 1908, issue of the *American Federationist*, the said Samuel Gompers wilfully wrote and published editorially the following:

"The Supreme Court of the District of Columbia has made permanent the injunction issued by Justice Gould enjoining the American Federation of Labor, its officers, its affiliated unions and their members and friends from declaring that the Van Cleave Buck Stove and Range Company of St. Louis, is on the unfair list of the American Federation of Labor or the publication of that statement in the *American Federationist*. An appeal will be taken to the Court of Appeals of the District of Columbia, and, if necessary, to the United States Supreme Court. The injunction does not compel any one to

provide, among other things, that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury. * * * nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury," and "to be confronted with the witnesses against him."

The Statute of Limitations was part of the original judiciary act passed contemporaneously with the adoption of the bill of rights, of which the above amendments are a part. That Congress had in mind the class of crimes referred to in the Constitution is apparent, in that the statute is limited to crimes prosecuted upon indictment or information, and can only be construed to relate to offenses within the criminal jurisdiction of the Federal courts. Inasmuch, therefore, as the Statute of Limitations relates only to statutory crimes within the jurisdiction of the Federal courts, it is not important that the courts of the District of Columbia are vested with common law jurisdiction (Code, D. C., sec. 1), since common law crimes are not embraced within the statute. If contempts are embraced within the classification of crimes included in the Statute of Limitations, equity, circuit, and probate courts, courts of appeal, and the Supreme Court of the United States are without original jurisdiction to punish for contempt, since the sole jurisdiction over criminal offenses is confined to the inferior courts of the United States expressly vested with criminal jurisdiction. In *Middlebrook v. The*

buy the Van Cleave Buck Stoves and Ranges, nor has any decree been issued compelling any one to buy Loewe's hats."

"XI. In the September, 1908, issue of the *American Federationist*, the said Samuel Gompers wilfully published editorially the following:

"We have also witnessed in the past year most serious judicial invasion and usurpation of individual liberty and human freedom by the abuse of the writ of injunction."

"An attempt has been made by the abuse of the writ of injunction to deny and prohibit the freedom of speech and the freedom of the press; and men have been cited to show cause why they should not be punished purely for the right of free press and free speech—rights not only natural and inherent in themselves, but guaranteed by the Constitution of our country, and which our forefathers fought to save, and which a free people never dreamed would ever be placed in jeopardy."

"XII. In his report to the Executive Council of the American Federation of Labor, bearing date the 9th day of September, 1908, and which he thereafter caused to be published at page 1001 of the *American Federationist* for the month of November, 1908, and widely disseminated, the said Samuel Gompers wilfully used the following language:

"Buck's Stove and Range Company Injunction Suit.

"As you have been previously advised, Vice-President Mitchell, Secretary Morrison, and myself have been cited to appear before the

State, 43 Conn., 257, where a criminal contempt had been tried and judgment imposed in the Court of Common Pleas, a court without criminal jurisdiction, the court said: "This is not a criminal proceeding within the meaning of the statute. The fine and imprisonment which the court is authorized to inflict for a contempt are not intended as a punishment for a crime committed in violation of the criminal law; and punishment for the contempt is no bar to a prosecution for a breach of the peace, notwithstanding the universal maxim that no one shall be put in jeopardy twice for the same offense. Courts of chancery and probate courts have no criminal jurisdiction; and yet it will hardly be denied that they have power to punish for contempt." In Michigan it has been held that "proceedings for contempt are not criminal causes within the intent and meaning of the Constitution of the United States or of this State." *In re Chadwick*, 109 Mich., 588.

In *Merchant's Stock & Grain Co. et al. v. Board of Trade of the City of Chicago et al.*, 201 Fed., 20, is found the following admirable distinction between the procedure in criminal prosecutions and in contempt cases: "It is to be noted: First. That criminal contempts are tried summarily, and not in the regular course or way. Second. That there is no right of trial by jury. *Eilenbecker v. District Court of Plymouth County*, 134 U. S., 31; *Interstate Commerce Commission v. Brimson*, 154 U. S., 447; *In re Debs*, 158 U. S., 564; *King v. Ohio & M. Ry. Co.*, 7 Biss., 529, 14 Fed. Cas., 539. Third. Courts of chancery and other courts without criminal jurisdiction

Supreme Court of the District of Columbia, to show cause why we should not be punished for contempt for violation of the court's injunction. The petition upon which the Buck's Stove and Range Company asked for our punishment was published in the September issue of the *American Federationist*, and I suggest that it be read in connection herewith, as it will show to what extent the Executive Council and officers and members of affiliated organizations and all others are enjoined, and what they are enjoined from doing.

"Your attention is especially called to a feature of the case of this injunction. If all the provisions of the injunction are to be fully carried out, we shall not only be prohibited from giving or selling a copy of the proceedings of the Norfolk Convention of the American Federation of Labor, either a bound or unbound copy; or any copy of the *American Federationist* for the greater part of 1907, and part of 1908, either bound or unbound, but we, as an Executive Council, will not be permitted to make a report upon this subject to the Denver Convention. Unless we violate the terms of the injunction, we are prohibited from referring to the case at all, either in our report to the convention or to others, and should a delegate to the convention ask the Executive Council what disposition has been made or what the status of the case is, we shall be compelled to remain silent. For one I am unwilling to be placed in such a position. I have neither the inclination nor the intention of violating the process of the court, but I can not see how it is possible for us to hold up our heads as honest men, and still refuse to give an accounting to our fel-

can punish for so-called criminal contempt. *Middlebrook v. State*, 43 Conn., 257; *Cartwright's Case*, 114 Mass., 230; *Rapalje on Contempt*, sec. 3. Fourth. As there is no power in any except the court against which the contempt is committed to punish it, that is, as such court has exclusive jurisdiction, no change of venue can be allowed. *Rapalje on Contempt*, par. 13. Fifth. For a criminal actual contempt a defendant may without a waiver and without his consent be sentenced in his absence. *Ex parte Terry*, 128 U. S., 289; *Middlebrook v. State*, 43 Conn., 257. Sixth. An act which is a contempt of court and also a crime may be punished both by the summary provision and by indictment, and neither will bar the other. *Bishop's New Crim. Law*, sec. 1067; *Chicago Directory Co. v. U. S. Directory Co.*, 123 Fed., 194; *O'Neill v. People*, 113 Ill. App., 195. In other words, the constitutional provision protecting him against being twice put in jeopardy does not protect him from being punished for contempt and under indictment for the same act." For example, had respondents been indicted and tried, as might have been done, under section 5399 of the Revised Statutes of the United States (*Pettibone v. United States*, 148 U. S., 197), it would have been no bar to the present proceeding. This distinction eliminates all possibility of dispute as to the classification of contempt of court. If treated as a crime, it would be controlled by the jeopardy and other clauses of the Constitution. In view of the state of the law, it is not surprising that contempt proceedings have been char-

low-workers, and to the public as to the status and outcome of this case."

"XIII. In a public address made by him in the city of Indianapolis, State of Indiana, on the 29th day of September, 1908, the said Samuel Gompers said:

"I want to say this to you and to all that it may concern, that so long as I retain my health, and my sanity, I am going to speak upon any subject on God's green earth, and as a citizen of this country and as editor of the American Federationist, the official monthly magazine of the American Federation of Labor so long as I am endorsed by labor of the United States with the performance of duties of that office, I will discuss every subject which forms itself to my judgment as being just and right. * * * The injunction which Judge Taft issued while upon the bench is now the basis for the injunction against the American Federation of Labor and its officers and the great rank and file of the Labor organizations of the country, just as in issuing the injunction of the Buck's Stove & Range Co. quoted in Judge Taft's injunction in support of his. Judge Gould's position. Do you know that about two weeks ago John Mitchell, Frank Morrison and I were three of us haled to court to show cause why we should not be punished, why we should not be sent to jail for contempt of court. * * * I want to say to you that if the injunction is strictly construed and enforced, I am in contempt of court again for telling you that, but I propose to discuss this thing, and I do not want to be in contempt of court, but I propose to discuss it. The injunction prohibits me from mentioning the above

acterized as *sui generis*. *O'Neill v. United States*, 190 U. S., 36; *Bassette v. Conkey*, 194 U. S., 324.

Thus, it will be observed that in the exercise of this inherent power, the prosecution for contempt of court is not confined to the criminal courts, and many of the essential guaranties of the Constitution relating to the trial and punishment of crimes are totally disregarded.

It may well be that, owing to the peculiar character of proceedings to punish for contempt of court, technically neither in equity nor at law, unreasonable delay in instituting proceedings after the commission of the acts complained of would constitute laches, and justify appellate interference. That condition, however, does not arise in this case. Respondents were originally proceeded against without delay. The appeal was promptly heard in this court, and advanced for hearing in the Supreme Court. When the judgment was there reversed and remanded for such further proceedings as might seem advisable, the court proceeded with extreme promptness to institute the present action. Hence, there is nothing in this case to justify us in invoking the rule of laches, or to call for an expression of opinion as to our jurisdiction in the premises.

It appears that when the former case was certified back to the Supreme Court of the District of Columbia for dismissal, Mr. Justice Gould was presiding in that division of the equity court where the decree in the original injunction suit, Equity No. 27,305, was entered. Instead of instituting this proceeding, he certified the matter

stove and range company in this case to anybody, either by word of mouth or by letter, or either in letter or circular or any way, but I can't help that. I must discuss it. I will explode if I don't, and I don't want to go to jail but I prefer that to exploding. I don't know what his Honor, the Judge, may do with Frank Morrison and John Mitchell and I. * * * The judge need not give any explanation as to why he finds a man has not shown good cause why he should not be punished for contempt of court. He issues the prescribed injunction to its extent; he hales to the court the man who he charges as having violated it, and then he sets the punishment as his judgment, his opinion. If he has had a good night he may be lenient with the culprit; if he has had a bad night, Lord pity the poor fellow; and I suppose good and bad nights are frequently controlled by good or bad evenings before the night.'

"XIV. In a public address delivered by him in the city of Baltimore, State of Maryland, on or about the 26th day of October, 1908, the said Samuel Gompers, said:

"The injunction issued against me by Judge Gould was based on Judge Taft's decisions. By that injunction I am restrained from talking to you about this case. No labor leader can mention it in speech or circular. I am enjoined from telling you I won't buy a Buck's stove or range. But I won't buy one just the same. I am enjoined from telling you there is no law compelling you to buy one, but there isn't such a law.

"Because of this case I am on trial, and may have to go to jail.

over to Mr. Justice Wright, who was presiding in the other equity division of the court where these proceedings were begun and captioned Equity No. 30,180. This course of proceeding is assigned as error. The Supreme Court of the District of Columbia is a single court of general jurisdiction with six judges. The mere fact that the various jurisdictions are by rule divided and assigned to different judges does not in any way effect the general jurisdiction of the court. The action here is for the violation of the terms of an order of injunction issued by the Supreme Court of the District of Columbia, and the mere fact that this proceeding was instituted in a different equity division, as composed by the rules of the court, than that in which the injunction proceeding originally existed, is unimportant. They both originated in the equity branch of the court. Where the contempt is for violation of an order of a court of equity, it is proper that the contempt be prosecuted by that court. *Bessette v. Conkey*, 194 U. S., 324. The contempt proceeding may be in the title of the original case. *Bessette v. Conkey*, *supra*. Or it may be in the name of the United States. *O'Neill v. United States*, 190 U. S., 36. Or it may be on the relation of the party cited. *In re Debs*, 158 U. S., 564. Or it may be purely an *ex parte* proceeding. *Ex parte Fisk*, 113 U. S., 713. As was said in *Bessette v. Conkey*, *supra*: "A contempt proceeding is *sui generis*. * * * It may be resorted to in civil as well as criminal actions, and also independently of any civil or criminal action."

There is no fun in going to jail, and I don't want to go, for no man would feel more keenly the sting of having his liberty restrained. But the whole world would be a narrow cage were I denied the freedom of speech. I say these things with a full consciousness of what the responsibility may be. But jail or no jail, I'm going to discuss the principles of liberty.

"XV. That, at the public reception tendered him by the labor organizations of the city of Washington in the month of November, 1908, the said Samuel Gompers made an address, which he caused to be published in the January, 1909, *American Federationist*, in the course of which he uttered the following language:

"Now you know the Supreme Court of the District of Columbia has issued an injunction against the American Federation of Labor, its executive officers, our affiliated organizations, and their members and friends and sympathizers and agents, attorneys and counsel and conspirators and co-conspirators and what not, and among these you are included. The court issued the injunction prohibiting us from publishing, from printing, from writing, from speaking, from whispering that the Van Cleave Buck's Stove and Range Company is unfair to organized labor, and for any one to publish, to print, to write a letter or to speak of this is violation of the terms of the injunction. Yet the Constitution of the United States provides that the right of freedom of speech and freedom of the press and public assemblage shall never be denied or abridged. In other words, an injunction of such a character is an invasion of the constitutionally guaranteed rights of every man and woman in this country.

Contempt of court may be prosecuted by a committee of the bar appointed by the court for that purpose, or by the proper prosecuting officer of the jurisdiction, or by both. No particular form of complaint is necessary. A criminal contempt may be brought to the attention of the court by verified petition in the name of the parties to the original suit, and prosecuted at the instance of the injured party by his attorneys. *Bessette v. Conkey*, *supra*. Formal charges as in criminal cases are unnecessary in contempt proceedings. All that is necessary to their validity, is that the alleged contemnor shall have notice of the charges and an opportunity afforded him to make his defense. In *In re Savin*, 131 U. S., 267, the court, discussing the analogy between contempt and disbarment proceedings, quoted with approval from *Randell v. Brigham*, 7 Wall., 523, 540, as follows: "It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court on its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense."

Error is urged in the appointment of a United States commis-

"I have said, and I now want to repeat here, not in bravado, but in full consciousness of the responsibility with which the statement may be interpreted, that when it comes to a choice between obeying an injunction denying me the right of free speech, free expression of the thoughts that come to my mind and which are not in violation of the laws of my country, I shall have no hesitancy in standing upon my constitutional rights. We have a dispute with the Van Cleave Buck's Stove & Range Company; I have been enjoined from saying that I won't buy a Buck's stove or range, and I won't, and because I have said this in several ways, by discussion of the case editorially and in the *American Federationist*, and Frank Morrison has sent out the *American Federationist* containing these things I have said, and because John Mitchell was presiding over the convention of the United Mine Workers, when a motion was placed before that body, advising the members of the mine workers not to buy a Buck's stove or range, we have been charged with contempt—that is, we have been called upon to show cause why we should not be sent to jail, and I could not show cause.

"The things I have been charged with, I did. I have not denied them. I have discussed them upon the platform, as I discuss them here. I have written circulars about them. Secretary Morrison sent them out, and I ask you now to place yourself in my position, what would you do."

"XVI. In a report made by the said Samuel Gompers to the convention of the American Federation of Labor held in November,

sioner for the purpose of taking testimony in this cause. The custom of taking testimony by deposition, affidavit or interrogatories in contempt cases is ancient. Newland's Chancery Practice, Vol. 1, 392. The practice has prevailed generally in this country. *Rapalje on Contempt*, 124; *Fletcher's Eq. Pl. & Pr.*, sec. 553; *Una v. Dodd*, 38 N. J. Eq., 460. It was the method adopted by the Supreme Court in the recent case of *United States v. Shipp*, 203 U. S., 563; 214 U. S., 386. See also *In re Savin*, 131 U. S., 267, 278; *In re Chiles*, 22 Wall., 157. The question, however, does not arise in this case, since all testimony was taken in open court.

The committee in its report inserted the following suggestion: "With regard to each and every of the acts, statements and publications above set forth, the said Samuel Gompers asserted, and it may be he then believed, that the injunction was not binding upon him because of what he claimed to be his constitutional right of free speech and a free press and it may be that, now that this contention upon his part has been determined by the Supreme Court of the United States to be unfounded, he may be prepared to make such due acknowledgment, apology, and assurance of future submission to the court as may sufficiently answer the necessary purpose of vindicating its authority, and that of the law. Should such acknowledgment, apology, and submission not be forthcoming, after due notice and opportunity, the course necessary to be pursued to main-

1909, the following language was used by him, referring to the injunction granted by this court on December 18, 1907:

"When a judge so far transcends his authority, and assumes functions entirely beyond his power and jurisdiction, when a judge will set himself up as the highest authority in the land, invading constitutionally guaranteed rights of citizens, when a judge will go so far in opinion, decisions, and action that even judges of the Court of Appeals have felt called upon to criticize his action—"unwarranted" and "foolish"—under such circumstances it is the duty of the citizen to refuse obedience and to take whatever consequences may ensue."

"Each and every of the foregoing publications, statements, and acts, of the said Samuel Gompers was in wilful violation of the injunction decree of this court in the said equity cause of the *Buck's Stove & Range Company v. the American Federation of Labor, Samuel Gompers and others*, No. 27,305, was done for the purpose of inducing others to disregard and violate the injunction of this court, and thereby to defeat it, and, in each of the said publications, statements, and acts, the said Samuel Gompers is guilty of contempt of the court, and has subjected himself to due punishment therefor.

"With regard to each and every of the acts, statements, and publications above set forth, the said Samuel Gompers asserted, and it may be he then believed, that the injunction was not binding upon him because of what he claimed to be his constitutional right of free speech and a free press; and it may be that, now that this contention upon his part has been determined by the Supreme Court of the United States to be unfounded, he may be prepared to make such

tain its dignity and due respect for and obedience to the law, is respectfully submitted to the court for its consideration." The same suggestion was made in the report to both Mitchell and Morrison. It appears that the court stood ready up to the time of pronouncing judgment to accept a compliance with the terms of the suggestion as purging respondents of contempt and a justification for their discharge. They, however, refused to adopt the suggestion offered.

This is important in measuring the intent and temper of respondents. In the former proceedings, they attempted to justify upon the ground that the order of injunction was an abridgement of the right of free speech and a free press. Three courts, culminating with the Supreme Court of the United States, had held against them, and the only question submitted by this suggestion was whether they were now ready to submit to the law of the land as interpreted by its highest tribunal. Standing convicted of a most persistent and flagrant violation of an order of a court of the United States, after every excuse for their action had been brushed away, they not only refused submission to the courts, but, by their action, contemptuously defied all lawful and constitutional authority—yea, Government itself.

The mere fact that respondents are charged with the disobedience of an order of injunction is unimportant compared with the larger question involved in this case. We are confronted with a deep-laid

due acknowledgment, apology, and assurance of future submission to the court as may sufficiently answer the necessary purpose of vindicating its authority, and that of the law. Should such acknowledgment, apology, and submission not be forthcoming, after due notice and opportunity, the course necessary to be pursued to maintain its dignity and due respect for and obedience to the law, is respectfully submitted to the court for its consideration.

"JOSEPH J. DARLINGTON,

"JAMES DAVENPORT,

"JAMES M. BECK,

Committee.

"DISTRICT OF COLUMBIA, ss: "

"I, Daniel Davenport, on oath say that I have read the foregoing report, signed by Joseph J. Darlington, James M. Beck, and myself, committee, and know the contents thereof; that this affidavit is made by me on behalf of the said Joseph J. Darlington and James M. Beck, as well as on my own behalf, because of the fact that the said matters and things in the said report set forth are more largely within my personal knowledge; that the matters and things set forth in the said report as of personal knowledge are true, and that those set forth upon information and belief I believe to be true.

"DAN'L DAVENPORT.

"Subscribed and sworn to before me this 24th day of June, A. D. 1911.

[SEAL.]

"IRWIN H. LINTON,

Notary Public, D. C."

conspiracy to trample underfoot the law of the land, and set in defiance the authority of the Government. The prominence of the respondents only adds to the gravity of the offense. Their wide influence and power thus exerted reaches not only to every subordinate branch of the great organization of which they are the leaders, but to its friends and sympathizers. If law is to be supreme; if the authority of the Government is to be maintained, it is not for the courts to treat lightly a conspiracy for their destruction, either because of the prominence and influence of the conspirators, or in deference to the inspired clamor of their misguided followers. Mercy follows justice. It is not a time for appellate tribunals to indulge in finespun theories of practice or procedure for the purpose of finding a plausible excuse for discharging those, however prominent, who have offended against the authority of law and government. If men of high position may defy the authority of the constitutionally ordained tribunals of the Government, and escape through a loose administration of justice, what can be said of their followers? Inspired by the success of their leaders, they will become imbued with a more vicious spirit, because less re-trained by the refinements of education and the associations surrounding powerful leadership.

But it is urged that the punishment imposed is unusual and excessive. With this contention we agree. But has this court power to modify the judgment? In *Bullew v. United States*, 160 U. S., 187, the court held that where there was a verdict of guilty on two counts, only the second being good, and "as the only errors found in the record relate to and affect the crime covered by the first count, substantial justice requires, and it is so ordered, that the general judgment rendered by the court below should be reversed and the cause be remanded to that court with instructions to enter judgment on the second count of the indictment, and for such proceedings with reference to the first count as may be in conformity to law."

This decision contains a full review of the statutes conferring appellate jurisdiction upon the Federal courts. Section 24 of the original Judiciary Act, 1 Stats. L., 738, provides: "That when a judgment or decree shall be reversed in a circuit court, such court shall proceed to render such judgment or pass such decree as the district court should have rendered or passed, and the Supreme Court shall do the same on reversals therein, except where the reversal is in favor of the plaintiff or petitioner in the original suit, and the damage is to be assessed, or matter to be decreed, are uncertain, in which case they shall remand the cause for a final decision."

Nor is this power of the appellate tribunals in review upon error limited to civil cases. Section 701 of the Revised Statutes provides: "The Supreme Court may affirm, modify, or reverse any judgment, decree, or order of a circuit court or district court acting as a circuit court, or of a district court in prize causes, lawfully brought before it for review, or may direct such judgment, decree, or order to be rendered, or such further proceedings to be had by the inferior court as the justice of the case may require." The power thus conferred upon the Supreme Court to modify a judgment on error is almost identical in language with the power conferred on this court by

the organic act (D. C. Code, sec. 226; 31 Stats. L., 1225, chap 854), which provides: "Any party aggrieved by any final order, judgment or decree of the Supreme Court of the District of Columbia or any justice thereof * * * may appeal therefrom to the said Court of Appeals, and upon such appeal the Court of Appeals shall review such order, judgment or decree and affirm, reverse or modify the same as shall be just."

Section 11 of the act of March 3, 1891 (26 Stats. L., 826), creating the circuit courts of appeal, provides as follows: "And all provisions of law now in force regulating the methods and systems of review through appeals or writs of error shall regulate the method and system of appeals and writs of error provided for in this act in respect of the circuit courts of appeals, including all provisions for bonds and other securities to be required and taken on such appeals and writs of error."

Referring to these statutes the court in the *Ballew* case said: "It thus conclusively appears that the authority of this court to reverse, and remand with directions to render such proper judgment as the case might require, upon writs of error in criminal cases, to State courts and to circuit courts in capital cases, was confessedly conferred by express statutory provisions, and that a like power was conferred upon the circuit courts of appeals and circuit courts in cases where they exercised jurisdiction by error in criminal cases over the district courts. From this and from a review of the legislation on the subject on the powers conferred upon this court as a reviewing court, it follows as a necessary conclusion that general authority was given to it on writ of error to take such action as the ends of justice, not only in civil, but in criminal cases, might require."

Thus it would seem that in this country, as in England since the act of 11 and 12 Viet., c. 78, sec. 5, appellate courts in review on error, where the error exists solely in the judgment of the court, are vested with power to reverse the judgment and remand the case for a proper judgment. In *Middlebrook v. State*, supra, where the court in a contempt case exceeded its power in imposing costs in addition to fine and imprisonment, the Supreme Court of the State reversed that portion of the judgment relating to costs, and affirmed the judgment in respect of the fine and imprisonment. It is, however, unnecessary in the present case to decide whether this power extends to a judgment in a civil case or a statutory crime, since we are here considering the summary proceeding for contempt of court, where not only the form of proceeding largely, but the punishment entirely, is left to the discretion of the offended court. Where the only error in such a case consists in the imposition of excessive punishment, the error amounts simply to an abuse of discretion.

While the power to punish for contempt of court is vested in the court against whose dignity and authority the offense has been committed, and without which power a court would be unable long to exist, yet this discretion may be abused. If a court, for instance, should impose life imprisonment as a penalty for a contempt of its authority, it would constitute such an abuse of discretion as would amount to the exercise of mere arbitrary power. So, a court may

exercise arbitrary power in imposing an excessive fine or limited term of imprisonment. Arbitrary power exists nowhere in our system of government. The authority to restrain its exercise, without doing violence to the enforcement of the law, or without permitting the guilty to escape just punishment, must exist somewhere.

In our former opinion (33 App. D. C., 577), it was intimated that this court is without power to modify a judgment on appeal. This point was not there urged or regarded as essential to the disposition of the appeal. Hence, the broad statement must be accepted as an expression of opinion relative to our appellate jurisdiction over judgments in general, and without application to an exceptional case like the present, where the erroneous judgment was rendered in the exercise of judicial discretion, and where, from the record, without assuming the prerogatives of the trial court, we can direct a modification of the judgment.

In *Billings v. Field*, 36 App. D. C., 16, this court, considering its power to review discretionary acts of the lower court, said: "But, it is insisted, the discretion exercised by the trial court is not reviewable, and therefore its judgment will not be disturbed by an appellate tribunal except for errors in the determination of the questions arising upon the record. This court, in section 7 of the act of its creation (27 Stat. at L., 434, chap. 74), was expressly given jurisdiction to 'affirm, reverse, or modify,' on appeal, any final order, judgment, or decree of the Supreme Court of the District. This provision surely clothes this court with authority to inquire whether the trial court has exercised its discretion in accordance with established rules and precedents governing the exercise of such discretion."

This court has held in a criminal contempt, that the review on appeal must be as at common law upon writ of error. This, however, relates only to the procedure essential to bring up for review the errors relied upon for a reversal of the judgment. While in a proper case our jurisdiction is confined to reviewing alleged errors of law, the limitation does not apply where it appears on the face of the judgment that there has been an abuse of discretion. This is unlike an ordinary criminal proceeding, where the maximum and minimum penalties are fixed by statute, and the court, in pronouncing judgment must keep within those limits; nor can it be compared to a civil action where the judgment is controlled by the verdict of a jury. In a proceeding for punishment for contempt of court, the case is tried in a summary manner by the court offended against, without the aid of a jury, or limitation as to the penalty that may be imposed. It is even doubtful if the pardoning power has jurisdiction to intervene. We think, therefore, that in contempt proceedings where the exercise of unlimited discretion is vested in the lower court, an abuse of that power is a proper matter for appellate revision. An abuse of discretion, however, when the abuse consists alone in the imposition of excessive punishment, does not constitute such reversible error as to justify the court in directing a new trial or the dismissal of the action and discharge of the accused. In the absence of reversible error in the trial, as in this case, it would be doing a useless thing to order a new trial, when it is within the power of the

appellate tribunal to fix a reasonable punishment, and accordingly direct a modification of the judgment.

The penalty imposed for contempt of court does not partake of many of the elements included in punishment for crime. It is imposed in many instances for offenses which are neither mala in se nor mala prohibita, but purely for the protection of the dignity and authority of the court. "In brief, a court, enforcing obedience to its orders by proceedings for contempt, is not executing the criminal laws of the land, but only securing to suitors the rights which it has adjudged them entitled to." *In re Debs*, 158 U. S., 561, 596. Hence, the elements to be considered by legislatures in establishing punishment for specific crimes, namely, the reformation, if possible, of the criminal, the protection of society, and the deterring of others from the commission of crime, are not necessarily to be taken into account in fixing the penalty for contempt. Contempt proceedings are not to be substituted for proceedings for the punishment of crime, but may be resorted to only when essential to enforce the power of a court whose authority has been defied.

The distinction is well stated by Judge Taft in *Thomas v. Cincinnati, etc., R. Co.*, 62 Fed., 803, as follows: "It is only to secure a present and future compliance with its orders that the power is given, and not to impose punishment commensurate with crimes or misdemeanors committed in the course of the contempt, which are cognizable in a different tribunal or in this court by indictment and trial by jury. I have no right, and do not wish, to punish the contemnor for the havoc which he and his associates have wrought to the business of this country, and the injuries they have done to labor and capital alike, or for the privations and sufferings to which they have subjected innocent people, even if they may not be amenable to the criminal laws therefor. I can only inflict a penalty which may have some effect to secure future compliance with the orders of this court and to prevent wilful and unlawful obstructions thereof."

The rule in imposing penalties for contempt is well established by centuries of practice. In this country the courts have seldom resorted to the imposition of penalties as severe as those imposed in this case. In the *Debs* case, a conspiracy to boycott the Pullman Palace Car Company by threatening to call a strike among the employees of any railroad company hauling Pullman cars was enjoined, and the order was being violated by preventing railway trains from operating into and out of the city of Chicago, thus obstructing the movement of the mails, as well as commerce generally. The property of many railroad companies was being destroyed, and life placed in jeopardy. The sentences imposed for contempt ranged from three to six months in jail. In the *Thomas* case for similar conduct a sentence of six months' imprisonment was imposed. In the case of *United States v. Shipp*, supra, where it was found that a sheriff and his deputies had abetted a mob in lynching a prisoner, the Supreme Court imposed a penalty of three months' imprisonment. These are extreme penalties. In the States, lighter penalties are imposed for similar offenses. In most cases, for the mere violation of an order of injunction, where private parties are involved, fines are imposed.

From these and similar cases, a rule of practice has been established in this country which should govern courts in imposing penalties for contempt. However, to permit respondents to escape punishment would be a travesty upon justice, but we think that, inasmuch as the extreme punishment that could be imposed against respondents in a criminal prosecution under section 5399, *supra*, would be limited to a fine of \$500 or imprisonment for three months, or both, the penalty imposed is so unreasonable as to demand modification.

The differences which necessitated the injunction have been settled. The sole purpose of punishment, therefore, is to give reasonable assurance that respondents will in the future respect the authority of the courts. While the injunction was issued to restrain the most subtle and far-reaching conspiracy to boycott that has come to our attention, the boycott had ceased and the necessity for the injunction no longer existed at the time this case was tried below. A penalty, therefore, which would have been justifiable to prevent further defiance of the order of the court but for the settlement, would now be needless and excessive. Had the court below imposed penalties not greatly in excess of those which we now deem adequate, we would not feel justified in holding that there had been an abuse of discretion. Since, however, the penalties imposed are so unreasonably excessive, and we are called upon to modify the judgments, we prefer to err, if at all, on the side of moderation. No one, however, can read this record without being convinced that respondent Gompers has been the chief factor in this contempt; hence, a severer punishment is merited in his case than in the cases of the other respondents.

Since the only error in the record relates to the excessive punishment imposed, justice requires, and it is so ordered, that the judgment be reversed, and the cause remanded with instructions to the court below to enter orders in proper form adjudging respondents, Samuel Gompers, John Mitchell, and Frank Morrison, respectively, guilty of contempt of court, and imposing a sentence upon Gompers of imprisonment in the Washington Asylum and Jail for the term of thirty days, and upon Mitchell and Morrison each a fine in the sum of \$500, and in default of the payment of said fine that they be confined in the Washington Asylum and Jail until paid.

Reversed and remanded.

Mr. Chief Justice SHEPARD, dissenting:

I regret that I can not concur in the opinion of the majority of the court, and shall state the grounds of my dissent as briefly as practicable.

The question of first importance is whether the criminal contempt charged constitutes an offense against the United States and is, therefore, subject to the bar of the Statute of Limitations. In my opinion such a contempt does constitute an offense against the United States. It was so regarded by the Supreme Court of the United States in the earliest case upon the subject (*Ex parte Kearney*, 7 Wheat., 38-43). In that case a writ of habeas corpus was denied to review a conviction of criminal contempt on the ground

that it was a criminal offense. This was followed in *New Orleans v. Steamship Company*, 20 Wall., 387-392, where Mr. Justice Swayne said: "Contempt of court is a specific criminal offense. The imposition of a fine was a judgment in a criminal case." See also *O'Neal v. U. S.*, 190 U. S., 36-38; *Besette v. Conkey Co.*, 194 U. S., 324-326, where Mr. Justice Brewer said: "A contempt proceeding is *sui generis*. It is criminal in its nature, in that the party is charged with doing something forbidden, and, if found guilty, is punished." See also *Worden v. Searls*, 121 U. S., 14-26; *In re Muller*, 7 Blatch, 23; *Fisher v. Hayes*, 6 Fed., 63-64; *S. C.*, 102 U. S., 121; *U. S. v. Jacobi*, Federal Cases No. 15460; *Castner v. Pocahontas Collieries Co.*, 117 Fed., 184; *Bullock E. & M. Co. v. Westinghouse Co.*, 129 Fed., 105-107; *Anargyros v. Anargyros Co.*, 191 Fed., 208-212; *In re Schull*, 221 Mo., 623-627; *Williamson's Case*, 26 Pa. St., 1-19; *People v. Neale*, 74 Ill., 68. In the following State cases criminal contempt was held to be an offense, and, as such, within the power of the executive to pardon: *Ex parte Stickney*, 4 S. & M. (Miss.), 751; *State v. Van Orden*, 31 La. An., 119-122; *Sharp v. State*, 102 Tenn., 10. In *Beattie v. People*, 33 Ill. App., it was held a misdemeanor, and, as such, subject to the general bar of the Statute of Limitations. In the case of *Gompers v. Buck Stove and Range Co.*, 221 U. S., 418-441, certain fundamental rules of the criminal law were declared to govern as follows: "In proceedings for criminal contempt the defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt, and can not be compelled to testify against himself." In *Pierce v. U. S.* (37 App. D. C., 582-589), this court said: "It is, therefore, in the nature of a criminal proceeding, and governed by the principles and procedure relating thereto, save in respect of indictment and trial by jury."

It is argued that criminal contempt is not an offense against the United States, punishable as a crime, because it is not defined in the statutes, and the courts of the United States have no jurisdiction of common law offenses. Undoubtedly, the general principle that the United States courts have no power to entertain a criminal charge unless it be an offense defined by statute prevails; but the question is, is there a well defined exception to this rule that includes the present case? In the beginning in England, a contempt of the Kings Court was a crime punishable by information, or indictment, and this applied to offenses committed in the presence of the court. This is established by the researches of Solly Flood, Q. C., contained in an article before the Royal Historical Society in 1885, *Transactions of the Royal Historical Society N. S.*, Vol. 3, 47-147. The object of the article was an inquiry into the foundations of the legend of the commitment of Prince Henry for contempt, by Chief Justice Gascoigne, as depicted by Shakespeare (*Second Henry IV*, Act V, Scene 2). The author was quite successful in demonstrating the want of foundation for the story. He established the fact by reciting the proceedings in the year books from the earliest days, that in no instance had there been a case where a criminal contempt had been punished in a summary way, or without indictment, presentment, or information, prior to the beginning of the reign of Henry

the Fifth. A transcript from the year books is given in the publication. John Charles Fox, who took up the question later, shows that no change was made in the procedure until the Star Chamber assumed the power to examine and punish contempt of the several courts. This power was exercised until its abolition by act of Parliament in Sixteenth Charles I, which act recites that all matters determinable in that court may have their proper remedy and redress by the common law of the land. From this time began the summary proceeding for contempt in the common law courts. See *Law Quarterly Review*, April and July, 1908, Number 95, title *The King v. Almon*. Prof. J. H. Beale, Jr., expresses the same opinion. He says: "Active contempt of the court, like similar contempt of the king's writs, is a crime, and may be presented by indictment, presentment, or information." *Harvard Law Review*, Jan., 1908, Vol. 21, pp. 161-169.

Lord Halsbury in his laws of England, treating of contempt, says: (Vol. 7):

"604. Criminal contempt is a misdemeanor punishable by fine or imprisonment, or by order to give security for good behavior. The superior courts have an inherent jurisdiction to punish criminal contempt by the summary process of attachment or committal in cases where indictment or information is not calculated to serve the ends of justice. The power to attach and commit, being arbitrary and unlimited, is to be exercised with the greatest caution, and as the application of this remedy invokes the withdrawal of the offense from the cognizance of a jury, it is only to be resorted to where the administration of justice would be hampered by the delay involved in pursuing the ordinary criminal process."

Again he says:

"998. Contempt of court is a misdemeanor at common law and punishable by fine and imprisonment without hard labor. Contempt of a court of record is also punishable summarily by committal or attachment by that court, and this is the course usually taken. But in all cases the remedy by indictment remains."

It was a necessary power to preserve the orderly administration of justice. As said by Lord Chief Justice De Grey, "It is legal because necessary." *Crosby's case*, 3d Wilson, 188; See *Ex parte Fiske*, 113 U. S., 713-718.

In a case in the Circuit Court for the District of Columbia an indictment for using contemptuous language to the Mayor of Alexandria in a proceeding before him as ex officio justice of the peace was upheld. *U. S. v. Beale*, 4 Cr. C. C., 313. That this necessary power was recognized as a part of the judicial power at the time of the adoption of the Constitution is thus stated by Mr. Justice Harlan: "The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power." *Ex parte Terry*, 128 U. S., 289-303-305. The learned Justice quoted also with approval *Cartwright's case*, 114 Mass., 230-238, where it was said this power "is inherent in Courts of Chancery and other superior courts, as essential to the execution of their powers and to the maintenance of their authority, and is part of the

law of the land, within the meaning of Magna Charta and of the Twelfth Article of our Declaration of Rights." He also quoted the following from *Cooper's Case*, 32 Vermont, 253-257: "The power to punish for contempt is inherent in the nature and constitution of a court. It is a power not derived from any statute, but arising from necessity; implied, because it is necessary to the exercise of all other powers." See also *Eilenbecker v. Plymouth County*, 134 U. S., 31-37. The existence of the power was expressly recognized by Statute R. S. 725. In *re Sabin*, 131 U. S., 261-275-276, it was said: "Under that statute the question whether particular acts constituted a contempt as well as the mode of proceeding against the offender, was left to be determined according to such established rules and principles of the common law as were applicable to our situation." Consistent with this view relating to the common law power of the courts and the mode of procedure, is the declaration of the Supreme Court in *Gompers v. Buck Stove and Range Company*, *supra*, that while trial by jury is not permitted, certain other principles of the bill of rights applicable to all criminal proceedings are to be observed. It seems clear that this right of summary procedure for criminal contempt was an essential part of the judicial power when our Constitution was adopted and passed as an incident of that power in the creation of the courts of the United States, as indicated in the cases cited above. *Ex parte Terry*; In *re Sabin*; *Eilenbecker v. Plymouth County*. For this reason the denial of the right of trial by jury is clearly within the principle enounced by Mr. Justice Brown in *Robertson v. Baldwin*, 165 U. S., 275-281. In that case a writ of habeas corpus had been denied in the Circuit Court for the District of Oregon. It had been sued out by seamen of an American bark, who had been, and were, confined on board ship by order of a justice of the peace under the power conferred by an act of Congress relating to seamen. R. S., Secs. 4596, 4598, and 4599. An appeal was taken to the Supreme Court, and the argument was that this imprisonment and compulsory service were in violation of the Thirteenth Amendment. Mr. Justice Brown said:

"The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well-recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formerly expressed. Thus, the freedom of speech and of the press (art. 1) does not permit the publication of libels, blasphemous, or indecent articles, or other publications injurious to public morals or private reputation; the right of the people to keep and bear arms (art. 2) is not infringed by law prohibiting the carrying of concealed weapons; the provision that no person shall be twice put in jeopardy (art. 5) does not prevent a second trial, if upon the first trial the jury failed to agree, or if the verdict was set aside

upon the defendant's motion, *United States v. Ball*, 163 U. S., 662-672; nor does the provision of the same article that no one shall be a witness against himself impair his obligation to testify, if the prosecution against him be barred by the lapse of time, a pardon or by statutory enactment, *Brown v. Walker*, 131 U. S., 591, and cases cited; nor does the provision that an accused person shall be confronted with the witnesses against him prevent the admission of dying declarations, or the depositions of witnesses who have died since the former trial." *Robertson v. Baldwin*, 165 U. S., 275-281. See, also, *Dallemagne v. Moisan*, 197 U. S., 169-174.

This review makes it plain, to me at least, why all of the courts of the United States, civil as well as criminal, have jurisdiction of this particular offense, which has not been made a crime by statute. Being a criminal contempt—that is to say, a specific criminal offense prosecuted according to the practice of the courts of common law, I am of the opinion that it comes within the spirit, if not the letter, of the Revised Statutes, section 1041, which reads: "No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 1046, unless the indictment is found or the information is instituted within three years next after such offense shall have been committed." The spirit of the enactment is that no one shall be punished for an offense, not capital, unless the prosecution shall have been instituted within three years from its commission. The reason for requiring speedy prosecution in cases of criminal contempt are, if anything, stronger than those which apply to ordinary crimes and misdemeanors. The benefit of the punishment is largely lost by delay. The prosecution in this case was begun by the report of the committee making charges under oath, and is tantamount to an information, though not technically one. Save in the exceptional cases where the contempt is committed in the presence of the court, the defendant must be informed of the charge which he is called to answer.

In accordance with this view, every specification of the charge against John Mitchell was barred at the institution of the proceeding, and the judgment convicting him of contempt should, therefore, be reversed. The fifth specification of the charge against Frank Morrison is the only one not barred by limitation; and that one lacks the distinctness of allegation required in such a case. For example, it charges him with wilfully aiding Samuel Gompers in the circulation of the *American Federationist* for January, February, March, April, May, June, and September, 1908, in each of which reference was made to the Buck's Stove and Range Company in connection with the unfair list, etc. As to the numbers of January, February, March, April, May, and June, the charge is barred. Only the last number for September, 1908, comes within the three-year period. As to this the charge is too general to put the party upon notice.

In my search of the record I find but two paragraphs read from the *Federationist* of September, 1908. The first paragraph is a recital of the fact that Gompers, Morrison, and Mitchell had been "Haled into court charged with violating the celebrated injunction

order. * * * Money makes the mare go, and Mr. Van Cleave's money is making this contempt case go, but we have had Van Cleave before, and will have them in the future, and labor will rise in its might and crush Mr. Van Cleave and all his money that may work now or in the future for the purpose of restricting labor in its fundamental rights of free speech and free press." It is a fact that the proceeding for contempt there referred to was instituted by Mr. Van Cleave, as president of the prosecuting company, and, apparently, at his expense.

The second paragraph is on the subject of free speech and free press, as threatened by injunctions, but contains no mention of the boycott or the names of any of the parties. Both paragraphs were objected to as irrelevant. In one place, also, in the record of the testimony it would appear that the entire petition filed against the defendants for contempt by the Buck's Stove and Range Company was published in the same number. I perceive no violation of the injunction in any of these articles. All newspapers had the right to publish the court proceedings.

Coming to the specifications of the charges against Samuel Gompers that are within the three-year period. The charge in article 10, July, 1908, is the publication of the facts in regard to the granting of the injunction. This gives a general statement of the points of the injunction and concludes with the following paragraph: "The injunction does not compel any one to buy the Van Cleave stoves and ranges." It certainly was not a violation of the injunction to publish the fact that it had been granted; and as regards the paragraph above, this is a statement of a fact and does not necessarily show an intention to violate the injunction order. Article 11, September, 1908. This seems to me to be an expression of opinion with regard to the effect of the action of the court which was not prohibited by the injunction. Article 12 is to the same effect. Article 13, containing extracts from the speech of Samuel Gompers of September 29, 1908, is to the same effect. Article 14 likewise. Article 15, which contains the report of a speech made at a reception November, 1908, is of the same character. Article 16 contains the report of a speech made by Gompers at Baltimore. In this there is no violation of the injunction. It is true that he described the injunction as an unwarranted invasion of his rights and said that it is the duty of the citizen in such case to refuse obedience and to take whatever consequences may ensue. While this may have shown an intention to continue the boycott in violation of the injunction, if there was *any* evidence that the boycott had been continued, yet in the absence of any proof that the boycott had been continued or there ever had been an express violation of the injunction, the remark itself was not a violation. It is a heated expression and nothing more than the braggadocio of a political speech.

It is to be remembered that the publication of the "unfair list" had been discontinued in obedience to the command of the injunction, and there is no evidence that the prohibited boycott had been renewed or carried on by anybody anywhere. It is declared by the Supreme Court that the proof of the offense must be established be-

yond a reasonable doubt. Each defendant had made answer under oath denying any violation of the injunction or any attempt or intent to disobey the order of the court. It is true that the rule of the common law which permitted one to acquit himself of contempt by denial of the charge under oath, no longer prevails in this jurisdiction. *Pierce v. U. S.*, 37 App. D. C., 582-586; *U. S. v. Shipp*, 203 U. S., 563-574. But as suggested in the *Shipp* case, the rule might apply where the intent is ambiguous.

As weight has been given to the failure of the defendants to take advantage of the suggestion made in the report of the committee, which is copied in the opinion of the court, I take leave to express my views upon the point. This suggestion assumes the guilt of each defendant, and is that they confess that guilt, make due apology and assurance of their submission in future to the law as pronounced in the opinions of the courts. In case of compliance with this suggestion it is suggested to the trial court that it accept the same and extend mercy. The failure of the several defendants to act upon this suggestion should, in my opinion, have ended the matter then and there. The trial court, however, pressed the matter, especially upon defendant Mitchell, as is shown in several pages of the printed record. The defendant answered that he had truthfully asserted that he had not disregarded the injunction, or aided in the prosecution of a boycott, and was disinclined to make any statement that would be regarded as either directly or inferentially an acknowledgment that his testimony is not true. Responding to a final suggestion of the trial justice, he addressed him the following letter, which is embodied in the record:

"MOUNT VERNON, N. Y., *February 17, 1912.*

"Hon. Daniel Thew Wright, Associate Justice, Supreme Court of the District of Columbia, Washington, D. C.

"SIR: At the close of my cross-examination in the contempt proceedings instituted against Mr. Gompers, Mr. Morrison, and me, the court stated that I was free, at any time, before these proceedings close, to give expression to the court, either orally or in written communication, upon the subject of the following recommendation:

" 'The court strongly recommends that you consider again the propriety of acquainting the court, before these proceedings close, with your conviction whether you ought and whether you expect hereafter to lend adherence to the decrees of the judicial tribunals of the land in matters committed by law to their jurisdiction and power.'

"I have given the court's recommendation careful thought and serious consideration, as a result of which, I desire to say that I believe a statement by me that I 'expect hereafter to lend adherence to the decrees of the judicial tribunals of the land' would be subject to no other interpretation than that I had hereto failed or refused to comply with the lawful decrees of the courts and that my evidence in this proceeding was not truthful and sincere and in keeping with the facts in this case. I am not willing to make any statement that would impugn my own testimony. I am not willing by any device

or subterfuge to attempt to deceive the court or secure an acquittal by any other means than those of the evidence and the truthfulness of the testimony.

"Indeed, I should feel more contentment if convicted conscious of the rectitude of my course and the truthfulness of my evidence than if acquitted on any other grounds than the facts as they have been presented to the court, and the law as it has been enunciated by the higher tribunals.

"Yours respectfully,
(Signed)

"JOHN MITCHELL."

The failure or refusal to accept the suggestion has been considered as "important in measuring the intent and temper of the defendants." I am unable to see how the refusal to apologize for an act, the commission of which had been expressly denied, shows a reprehensible intent or temper. On the contrary, it seems to me the natural conduct of a self-respecting man. Having sworn that he had neither disobeyed nor intended to disobey the mandate of the court, a confession that he had done so would be a solemn admission of the commission of wilful perjury. Moreover, the demand that the court be acquainted "before these proceedings close with your conviction whether you ought and whether you hereafter expect to lend adherence to the decrees of judicial tribunals of the land in matters committed by law to their jurisdiction and power," was entirely outside of the offense charged and beyond the power of any court.

In my opinion the judgment should be reversed.

MONDAY, *May 5th*, A. D. 1913.

April Term, 1913.

No. 2477.

SAMUEL GOMPERS, JOHN MITCHELL, and FRANK MORRISON,
Appellants,

vs.

UNITED STATES.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause, be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said Supreme Court with instructions to the court below to enter orders in proper form adjudging respondents Samuel Gompers, John Mitchell and Frank Morrison, respectively, guilty of contempt of court, and imposing a sentence upon Gompers of imprisonment in the Washington Asylum and Jail for the term of thirty days and upon Mitchell

and Morrison each a fine in the sum of five hundred dollars, and in default of the payment of said fine that they be confined in the Washington Asylum and Jail until paid.

Per Mr. JUSTICE VAN ORSDIEL,

May 5, 1913.

Mr. Chief Justice SHEPARD dissenting.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 768 inclusive contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Samuel Gompers, John Mitchell and Frank Morrison, appellants, vs. United States, No. 2477, April Term, 1913, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 16th day of May, A. D. 1913.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,

*Clerk of the Court of Appeals
of the District of Columbia.*

In the Supreme Court of the United States, October Term, 1912.

No. —.

SAMUEL GOMPERS, JOHN MITCHELL, and FRANK MORRISON,
Plaintiffs in Error and Appellants,
vs.

THE UNITED STATES.

*Petition of Samuel Gompers, John Mitchell, and Frank Morrison
for Writ of Error.*

To the Honorable the Chief Justice and the Associate Justices of
the Supreme Court of the United States:

The petition of Samuel Gompers, John Mitchell and Frank Morrison, defendants in the above entitled cause, respectfully shows that on the 5th day of May, 1913, the Court of Appeals of the District of Columbia entered a final judgment against your petitioners, in equity, in the Supreme Court of the District of Columbia, "In re Samuel Gompers," "In Re John Mitchell," "In Re Frank Morrison," wherein your petitioners were defendants and respondents, being charged with criminal contempt of the Supreme Court of the District of Columbia.

In the original complaint in said cause Joseph J. Darlington, Daniel Davenport and James M. Beck were appointed a committee authorized and empowered to inquire whether there was reasonable cause to believe that these petitioners had been guilty of contempt of an order of injunction issued by the Supreme Court of the District of Columbia on or about December 18, 1907, in a cause numbered equity 27305, entitled "The Buck's Stove & Range Company, plaintiff, vs. The American Federation of Labor, Samuel Gompers, et al., defendants," and if yea they were empowered and directed forthwith to file, present and prosecute against the respondents charges of contempt of court to the end that the authority of the court be established, vindicated and sustained; that the said committee reported that the respondents were guilty of contempt of court and had subjected themselves to due punishment therefor, the items of said report being more fully shown by the record herein; that after preliminary proceedings, more at length set forth in said record, the respondent Samuel Gompers was found guilty and sentenced by the Supreme Court of the District of Columbia, sitting in equity, to be confined in the prison of the Washington Asylum and Jail for and during the period of twelve months, the respondent John Mitchell to be also so confined for a period of nine months, and the respondent Frank Morrison to be also so confined for a period of six months. From the said findings and decree, these respondents appealed to the Court of Appeals of the District of Columbia, and upon a hearing of such appeal, a majority of the Court of Appeals reversed the sentences of the Court below, and directed said Court to enter new sentences, committing the respondent Samuel Gompers to jail, as aforesaid, for a period of thirty days,

and directing that the respondents John Mitchell and Frank Morrison should respectively be fined \$500.00 apiece, and committed to jail until said fine should be paid.

That in its said judgment the majority of the said Court of Appeals erred in the respects shown by the assignments of error filed herewith, and particularly among other things, in that—

1. It did not pass upon the error assigned in the proceedings below wherein that court overruled the motion to quash the proceedings upon the ground that they were criminal in their nature, these proceedings being brought in equity.

2. It did not expressly pass upon the error committed by the court below in overruling the motion to set aside the report submitted by the Committee.

3. It did not pass upon the error committed by the court below in refusing to strike out the names of the committee and substitute the name of the attorney of the United States for the District of Columbia, the committee having been biased by reason of their employment as attorneys for the plaintiff in the suit of the Buck's Stove and Range Company vs. Samuel Gompers et al.

4. The majority of the Court of Appeals erred in sustaining the court below in refusing to dismiss these proceedings, no proper replication having been filed to the plea of the statute of limitations.

5. The majority of the Court of Appeals erred in sustaining the court below in overruling the plea of the statute of limitations herein.

6. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold the respondents guilty of the charges made against them, or any of them.

7. The majority of the Court of Appeals erred in holding the respondents guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

8. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by the respondents after December 23, 1907.

9. The majority of the Court of Appeals erred in not finding that any charges against the respondents were barred by the statute of limitations.

10. The majority of the Court of Appeals erred in finding the respondents guilty of the charges against them, and also in so doing, relying on matters not in evidence and on charges not sustained.

11. The majority of the Court of Appeals erred in inflicting a criminal punishment when sitting otherwise as a court of equity.

12. That these respondents by their appearance and answers purged themselves of any possible charge of contempt, but that nevertheless the Court of Appeals erred in holding them guilty thereof.

And your petitioners claim the right to remove said cause to the Supreme Court of the United States by writ of error by virtue of the Judicial Code of the United States, section 250, this case being one in which the construction of a law of the United States was

drawn in question by the respondents, who claimed in the Supreme Court of the District of Columbia, and likewise in the Court of Appeals of said District, that they were entitled to the protection of section 1044 of the Revised Statutes of the United States, which provides that—

"No person shall be prosecuted, tried or punished for an offense not capital except as provided in section 1046, unless the indictment is found or the information is instituted within three years next after an offense shall have been committed," the majority of the Court of Appeals having held that this section could not be so construed as to apply to the present case on the ground that the offenses charged against the respondents were not criminal and that the proceedings to punish them were not by way of criminal information, the statute being construed to refer only to such offenses as were prosecuted expressly by the regular law officer of the Government, although the wording of the statute refers to "informations" and not to "criminal informations."

Wherefore your petitioners pray that the allowance of writ of error, returnable to the Supreme Court of the United States at Washington, District of Columbia, for citation and supersedeas and that a duly authenticated transcript of the record, proceedings and papers herein be sent to the United States Supreme Court.

Dated at Washington, D. C., June 16, 1913.

JACKSON H. RALSTON,

FRED'K L. SIDDONS,

WM. E. RICHARDSON,

Attorneys for Petitioners.

In the Supreme Court of the United States, October Term, 1912.

No. —.

SAMUEL GOMPERS, JOHN MITCHELL, and FRANK MORRISON,
Plaintiffs in Error and Appellants,

vs.

THE UNITED STATES.

Assignments of Error.

Now come Samuel Gompers, John Mitchell and Frank Morrison, Plaintiffs in Error, and respectfully submit that in the record, proceedings, decision and final judgment of the Court of Appeals of the District of Columbia, in the above entitled cause, there is manifest error, to wit:

1. It did not pass upon the error assigned in the proceedings below wherein that court overruled the motion to quash the proceedings upon the ground that they were criminal in their nature, these proceedings being brought in equity.

2. It did not expressly pass upon the error committed by the court below in overruling the motion to set aside the report submitted by the Committee.

3. It did not pass upon the error committed by the court below in refusing to strike out the names of the committee and substitute the name of the attorney of the United States for the District of Columbia, the committee having been biased by reason of their employment as attorneys for the plaintiffs in the suit of the Buck's Stove and Range Company vs. Samuel Gompers et al.

4. The majority of the Court of Appeals erred in sustaining the court below in refusing to dismiss these proceedings, no proper replication having been filed to the plea of the statute of limitations.

5. The majority of the Court of Appeals erred in sustaining the court below in overruling the plea of the statute of limitations herein.

6. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold the respondents guilty of the charges made against them, or of any of them.

7. The majority of the Court of Appeals erred in holding these respondents guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

8. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by any respondent after December 23, 1907.

9. The majority of the Court of Appeals erred in not finding that any charges against any respondent were barred by the statute of limitations.

10. The majority of the Court of Appeals erred in finding these respondents guilty of the charges against them, and also in so doing relying on matters not in evidence and on charges not sustained.

11. The majority of the Court of Appeals erred in inflicting a criminal punishment when sitting otherwise as a court of equity.

12. That these respondents by their appearance and answers purged themselves of any possible charge of contempt, but that nevertheless the Court of Appeals erred in holding them guilty thereof.

JACKSON H. RALSTON,

FRED'K L. SIDDON,

WM. E. RICHARDSON,

*Attorneys for Samuel Gompers, John Mitchell,
and Frank Morrison, Plaintiffs in Error.*

(Endorsed:) No. 2477. Samuel Gompers, John Mitchell, Frank Morrison, vs. United States. Petition for Writ of Error and Assignments of Error. Court of Appeals, District of Columbia. Filed Jun- 20, 1913. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between Samuel Gompers, John Mitchell,

and Frank Morrison, appellants, and The United States, appellee, a manifest error hath happened, to the great damage of the said appellants, Samuel Gompers, John Mitchell, and Frank Morrison, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 19th day of June, in the year of our Lord one thousand nine hundred and thirteen.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
*Clerk of the Supreme Court
of the United States.*

Allowed by
EDWARD D. WHITE,
Chief Justice of the United States.

[Endorsed:] No. 2477. Samuel Gompers et al., appellants, vs. United States. Writ of Error from Supreme Court, U. S. Court of Appeals, District of Columbia. Filed Jun- 20, 1913. Henry W. Hodges, Clerk.

In the Supreme Court of the United States, October Term, 1912.

No. —.

SAMUEL GOMPERS, JOHN MITCHELL, and FRANK MORRISON,
Plaintiffs in Error,
vs.
THE UNITED STATES.

*Petition of Samuel Gompers, John Mitchell, and Frank Morrison
for the Allowance of an Appeal.*

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Samuel Gompers, John Mitchell and Frank Morrison, defendants in the above entitled cause, respectfully shows that on the 5th day of May, 1913, the Court of Appeals of the District of Columbia entered a final judgment against your petitioners, in equity, in the Supreme Court of the District of Columbia, "In re Samuel Gompers," "In re John Mitchell," "In re Frank Morrison,"

wherein your petitioners were defendants and respondents, being charged with criminal contempt of the Supreme Court of the District of Columbia.

Said decisions of the Court of Appeals of the District of Columbia reversed and changed certain sentences herein rendered by the Supreme Court of the District of Columbia, as follows:

Said Supreme Court had sentenced Samuel Gompers to jail for twelve months, and the Court of Appeals changed it to thirty days; said Supreme Court had likewise sentenced John Mitchell to jail for nine months and the Court of Appeals changed the sentence to the infliction of a fine of \$500.00, and said Supreme Court had further sentenced Frank Morrison to jail for six months, and the Court of Appeals changed said sentence to the infliction of a fine of \$500.00.

From the aforesaid sentences of the Court of Appeals of the District of Columbia, the several respondents, parties hereto, have prayed for the allowance of a writ of error to the Supreme Court of the United States, which writ of error has been granted. That nevertheless in view of the fact that doubt may exist as to whether said cause should be taken to the Supreme Court of the United States by writ of error or by appeal, these respondents believe that they should also pray an appeal.

Wherefore these respondents pray that in addition to the writ of error heretofore granted herein, they may also be granted an appeal to the Supreme Court of the United States in the proceedings hereinbefore described.

SAMUEL GOMPERS,
JOHN MITCHELL,
FRANK MORRISON,

By J. H. RALSTON, *Attorney.*

June 19, 1913.

The appeal prayed for is allowed on furnish-bond for one thousand dollars, which bond I have this day approved.

EDWARD D. WHITE,
Chief Justice.

(Endorsed:) No. 2477. Samuel Gompers, John Mitchell, Frank Morrison, vs. United States. Petition for allowance of appeal, and order allowing same. Court of Appeals, District of Columbia. Filed Jun- 20, 1913. Henry W. Hodges, Clerk.

Know all men by these presents, that we, Samuel Gompers, John Mitchell, and Frank Morrison, as principal-, and Equity Surety Company, a corporation, of St. Louis, Missouri, as sureties, are held and firmly bound unto The United States in the full and just sum of One thousand (\$1,000.00) dollars, to be paid to the said The United States, its certain attorney, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 19th day of June, in the year of our Lord one thousand nine hundred and thirteen.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Samuel Gompers, John Mitchell, and Frank Morrison, appellants, and The United States, appellee, a judgment was rendered against the said Samuel Gompers, John Mitchell, and Frank Morrison and the said Samuel Gompers, John Mitchell, and Frank Morrison having obtained a writ of error and having been allowed an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the afore-said suit, and a citation directed to the said The United States citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Samuel Gompers, John Mitchell, and Frank Morrison shall prosecute said writ of error and appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

SAM'L GOMPERS, [SEAL.]
FRANK MORRISON, [SEAL.]
JOHN MITCHELL, [SEAL.]

By J. H. RALSTON, *Attorney.*

[Seal of Equitable Surety Company.]

EQUITABLE SURETY COMPANY,
By ALBERT W. WILLETT,
Attorney in Fact.

Sealed and delivered in presence of—

MARY W. GOODWIN.
O. J. RICKETTS.

Approved by—

EDWARD D. WHITE,
Chief Justice of the United States.

[Endorsed:] No. 2477. Samuel Gompers et al., Appellants, vs. United States. Bond on writ of error and appeal. Court of Appeals, District of Columbia. Filed Jun- 20, 1913. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, ss:

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Samuel Gompers, John Mitchell, and Frank Morrison are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and thirteen.

EDWARD D. WHITE,
Chief Justice of the United States.

Service accepted June 20, 1913.

CLARENCE R. WILSON,

*On Behalf of the Committee Appointed
by the Supreme Court of the District of Columbia.*

[Endorsed:] No. 2477. Court of Appeals, District of Columbia.
Filed Jun- 20, 1913. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, ss:

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Samuel Gompers, John Mitchell, and Frank Morrison are appellants, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and thirteen.

EDWARD D. WHITE,
Chief Justice of the United States.

Service accepted June 20th, 1913.

CLARENCE R. WILSON,

*On Behalf of the Committee Appointed by
the Supreme Court of the District of Columbia.*

[Endorsed:] No. 2477. Court of Appeals, District of Columbia
Filed Jun- 20, 1913. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

No. 2477.

SAMUEL GOMPERS, JOHN MITCHELL, and FRANK MORRISON
vs.

THE UNITED STATES.

Stipulation.

It is hereby stipulated and agreed between the parties to the above entitled cause that the copies of the record in the above en-

titled cause heretofore filed in the Supreme Court of the United States for use in connection with the petition for certiorari may be considered as filed in and part of the return on the writ of error and appeal to the Supreme Court of the United States allowed in the above entitled cause.

It is further stipulated and agreed that the record in appeal and on writ of error to the Supreme Court of the United States and upon certiorari if granted be made up and certified as one record.

RALSTON, SIDDON &
RICHARDSON,

Attorneys for Appellants and Plaintiffs in Error.

CLARENCE R. WILSON,
DAN'L DAVENPORT,
J. J. DARLINGTON,

*Attorneys for the Committee on Behalf
of the United States.*

(Endorsed:) No. 2477. Samuel Gompers et al., Appellants, vs. United States. Stipulation as to Record for Supreme Court U. S. Court of Appeals, District of Columbia. Filed Jun- 28, 1913. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 800 inclusive contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Samuel Gompers, John Mitchell, and Frank Morrison, appellants, vs. The United States No. 2477, April Term, 1913, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 3rd day of July, A. D. 1913.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of
the District of Columbia.*

Endorsed on cover: File No. 23,791. District of Columbia Court of Appeals. Term No. 640. Samuel Gompers, John Mitchell, and Frank Morrison, plaintiffs in error and appellants, vs. The United States. Filed July 14th, 1913. File No. 23,791.

Office Supreme Court, U. S.
FILED.

OCT 27 1913

JAMES H. MCKENNEY,
CLERK.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 640.

IN THE MATTER OF THE APPEAL, WRIT OF ERROR, AND
PETITION FOR CERTIORARI OF SAMUEL GOMPERS,
JOHN MITCHELL, AND FRANK MORRISON.

MOTION FOR ADVANCEMENT FOR HEARING.

JACKSON H. RALSTON,
WILLIAM E. RICHARDSON,
Attorneys for Petitioners.

ALTON B. PARKER,
Of Counsel.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1913.

No. 640.

IN THE MATTER OF THE APPEAL, WRIT OF ERROR, AND
PETITION FOR CERTIORARI OF SAMUEL GOMPERS,
JOHN MITCHELL, AND FRANK MORRISON.

MOTION FOR ADVANCEMENT FOR HEARING.

Now come the petitioners Samuel Gompers, John Mitchell, and Frank Morrison and respectfully represent to the court that there has been allowed by the Chief Justice of this honorable court an appeal and the issuance of a writ of error and pursuant thereto the said cause is before this court for hearing. That in addition there is pending a petition for certiorari.

That the several petitioners were charged in the Supreme Court of the District of Columbia with having respectively been guilty of contempt of the provisions of an order passed in the case of The Buck's Stove and Range Company against The American Federation of Labor; that such proceedings were passed upon a reference made by a justice of the Supreme Court of the District of Columbia to a committee consisting of three attorneys for the Buck's Stove and Range Company who were empowered to inquire whether there was reasonable cause to believe these petitioners guilty of contempt and, if so, to prosecute them; that in the proceedings subsequently had, the petitioners objected to the report of said committee finding them guilty of contempt on the ground that they had theretofore expressed themselves and were incapable of passing upon such judicial question; that

other and important objections were made to the proceedings at their several stages, one, among others, being that the several alleged complaints were barred by the Statute of Limitations, which objection was overruled; that as a result of the proceedings had in the trial court, the petitioner Gompers was sentenced to jail for twelve months, the petitioner Mitchell for nine months, and petitioner Morrison for six months; that said case was appealed to the Court of Appeals, which divided in its opinion, the majority finding these petitioners guilty and changing the sentence to imprisonment for thirty days in the case of Samuel Gompers and a fine of five hundred dollars (\$500) in the case of the remaining petitioners.

That it will appear from the foregoing, as well as more fully from the record, a large number of important questions were raised; while the case itself, being one of contempt, was criminal in its nature and as such should be advanced for hearing.

That the petitioners herein were not guilty of contempt and if they had been, the offense was cured by lapse of time, and the report upon which the proceedings herein were based was improper and a perversion of an office judicial in its issue; that these petitioners are desirous of being relieved from the burden of their present situation and are anxious that this Honorable Court should as speedily as possible determine their true status.

Wherefore, these petitioners pray that an order may be passed advancing this cause for early hearing and that they may have such other and further relief as they are entitled to in the premises.

SAMUEL GOMPERS,

JOHN MITCHELL,

FRANK MORRISON,

By JACKSON H. RALSTON,

WILLIAM E. RICHARDSON,

Their Attorneys.

ALTON B. PARKER,

Of Counsel.

Messrs. J. J. Darlington, Daniel Davenport, James M. Beck,
and Clarence Wilson, Committee.

GENTLEMEN: You will please take notice that on Monday,
October 27th, we will present the petition hereto attached
to the Supreme Court of the United States.

J. H. RALSTON.
W. E. RICHARDSON.

WASHINGTON, D. C., *October 21, 1912.*

Service by copy acknowledged October 21, 1913, and
application concurred.

J. J. DARLINGTON,
For Committee.

[22824]

IN THE

JAMES D. MAHER
Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 640.

**SAMUEL GOMPERS, JOHN MITCHELL, AND FRANK
MORRISON**

vs.

UNITED STATES.

ON APPEAL AND WRIT OF ERROR.

BRIEF OF APPELLANTS AND PLAINTIFFS IN ERROR.

JACKSON H. RALSTON,

WM. E. RICHARDSON,

Petitioners Attorneys.

ALTON B. PARKER,

Of Counsel.

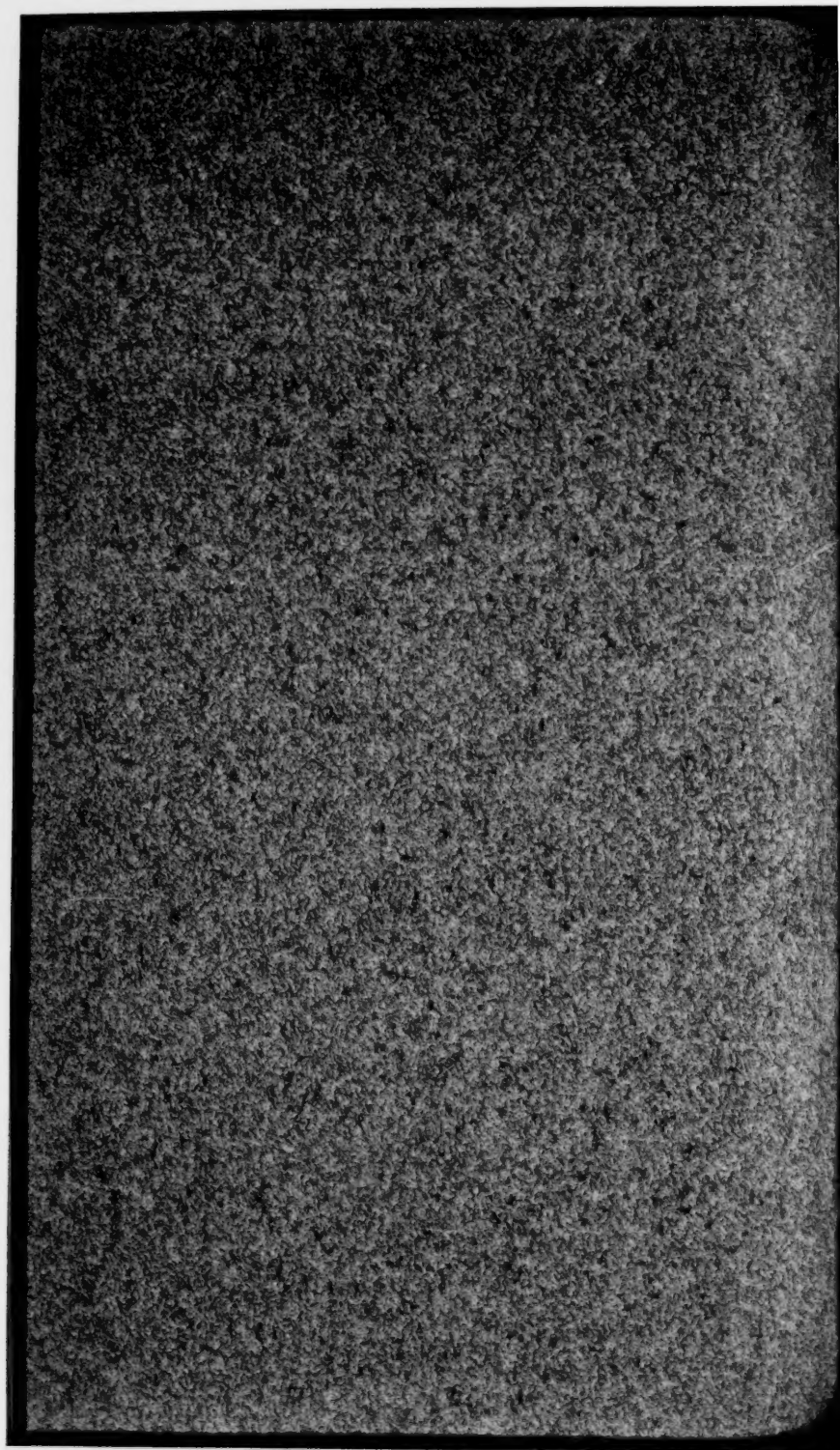


TABLE OF CONTENTS.

	Page
Statement of facts	1
Samuel Gompers	2-8
Preliminary injunction of December 18, 1907.....	8-9
Final decree of March 23, 1908.....	10-11
Amended decree of Court of Appeals	11
John Mitchell	12-13
Frank Morrison	13-14
Rules to show cause and subsequent motions and pleadings.	14-17
Testimony	17-21
Resolution of U. M. W. of A.	18
Editorial—"A Self-Inflicted Boycott"	19-20
Motion to quash	21
Sentences	21
History of prior litigation	22
Specifications of error	23-25
Argument	25
Theory as to real nature and effect of charges.....	25
Seventh specification	25
I. Fourth, fifth, and ninth specifications.....	31
Statutory provisions	32
What is the essence of contempt?.....	33
Is contempt of court a crime and were proceed-	
ings in this case criminal?.....	35
Contempt of court may be pardoned by the Presi-	
dent as a crime	48
Writ of error to Supreme Court not allowed, as	
contempt is criminal	48
Method of trial no criterion as determining	
whether criminal contempt is crime.....	49
Right to be informed of accusation and confront	
witnesses	53

	Page
What constitutes a criminal information.....	54
Has the Supreme Court of the District of Columbia inherent power to punish for contempt?....	59
Decisions supporting plea of statute of limitations in criminal contempt	63
Want of proper replication to the plea of the statute of limitations	64
As to what charges the plea of the statute was available	67
Résumé as to plea of statute of limitations.....	68
II. Sixth, eighth, and part of tenth specifications....	70
The respondents convicted in trial court, not of contempt of court, but of want of respect for judicial authority	70
No evidence of the existence of any unlawful boycott after December 23, 1907.....	76
Respondents' definition of "boycott".....	77
General considerations as to guilt or innocence of respondents	81
Samuel Gompers	86
John Mitchell	95
Frank Morrison	98
III. Tenth specification	99
IV. First, second, third, and eleventh specifications...	101
V. Twelfth specification	102
Rule as to purgation	102
Denials by defendants of wrongful intent.....	107
Facts indicating absence of wrongful intent.....	109
Discontinuance of boycott	109
Conditions confronting the defendants.....	114
Existence of organized attempt to destroy labor organizations	115
Suit by Buck's company made a test case....	117
Measures to provide a defense fund.....	119
Endeavor to obtain legislation.....	120
Grievances of labor made political issues....	121

CONTENTS.

iii

	Page
Ambiguous character of acts and utterances of defendants	123
Charge against each and all of the defendants...	123
Publishing the "Urgent Appeal"	124
Publishing editorial "A Review and Protest".	125
Publishing editorial prefixed to copy of injunction decree	127
Charges against both defendants Gompers and Morrison	128
Circulating January, 1908, <i>Federationist</i> after December 23, 1907.....	128
Circulating reports of proceedings of Norfolk convention	130
Statements as to right to refrain from buying Buck's stoves and ranges	133
Criticism of the abuse of the writ of injunction	135
Charges against defendant Gompers alone.....	136
Hastening publication of January, 1908, <i>Federationist</i>	136
Statement that he would not buy a Buck's stove and range	136
Insistence upon right of free speech and free press	137
References to controversy with Buck's Stove & Range Company	137
References to impossibility of complying with all the terms of the injunction.....	138
Statement, "The Things I Have Been Charged With I Did".....	140
Charges against defendant Morrison alone.....	141
Circulating resolution relating to "Campaign of Education"	141
Circulating sundry numbers of the 1908 <i>Federationist</i>	142
Charges against defendant Mitchell alone	143

	Page
Presiding over convention of United Mine	
Workers adopting boycott resolution.....	143
Application of purgation rule to cases at bar.....	147
Criminal nature of proceedings	147
Charges involve violation of only provisions against	
a boycott	147
Explanation by defendants of real purpose of acts	
and utterances	149
Attempt by trial court to obtain admissions of	
guilt	150
Aid given prosecution by defendants.....	152
Responsibility of void provisions of decree for	
seeming contempt	154
Conclusion	156

STATUTES CITED.

Constitution, 6th Amendment	49
District Code, section 67 (Certification of Cases)	26
Rev. St. U. S., section 725 (Contempts)	32, 46, 136
Rev. St. U. S., section 1044 (Limitations)	32, 46, 54
Stat. at L., vol. 26, ch. 517.....	47
Stat. at L., vol. 1, p. 73.....	60
Stat. at L., vol. 4, p. 487.....	60

AUTHORITIES CITED.

Blackstone, 4 Comm., 287.....	104
Bouvier's Law Dictionary—title, "Purgation".....	104
Clark's Criminal Procedure, p. 240	65
Ency. of Law, vol. 6 (2d ed.), p. 974.....	52
Ency. of Pleading and Practice, vol. 13, pp. 234, 238.....	65
Halsbury's Laws of England—titles, Contempt and Criminal	
Law and Procedure	44
Harvard Law Review, article by Prof. J. H. Beale, Jr.	42
Hawkins's Pleas of the Crown, vol. II.....	55

CONTENTS.

v

	Page
Jurist, vol. 6, p. 161.....	54
Law Quarterly Review for January, 1908, article by J. C. Fox..	36
Opinions Attorneys General:	
Vol. 3, p. 622.....	46-48
Vol. 4, p. 317.....	48
Vol. 4, p. 458.....	46-48
Vol. 5, p. 579.....	48
Vol. 19, p. 476.....	48
Oswald on Contempt	43
Story on the Constitution, section 791.....	51
Transactions Royal Historical Society (N. S.), vol. 3, 1886, article by Solly Flood	36-57

TABLE OF CASES.

Acker, <i>In re</i> , 66 Fed., 291.....	47
American Federation of Labor <i>vs.</i> Buck's Stove & Range Co., 33 App. D. C., 83.....	154
Anargyros <i>vs.</i> Anargyros & Company, 191 Fed., 208.....	46
Attrill <i>vs.</i> Huntington, 70 Md., 199.....	66
Beattie <i>vs.</i> The People, 133 Ill. App., 651.....	63
Beukalaer <i>vs.</i> People, 25 Ill. App., 460.....	106
Blush, <i>In re</i> , 48 Pac., 147.....	58
Bollman and Swartwout, 4 Cranch, 93.....	61
Brown <i>vs.</i> Walker, 161 U. S., 519.....	52
Buck's Stove & Range Co. <i>vs.</i> Am. Fed. of Labor <i>et al.</i> , 33 App. D. C., 83; 219 U. S., 581.....	22
Bullock E. & M. Co. <i>vs.</i> Westinghouse E. & M. Co., 129 Fed., 105.	46
Burke <i>vs.</i> The State, 47 Ired., 528	103
Callan <i>vs.</i> Wilson, 127 U. S., 540.....	51
Cartwright's case, 114 Mass., 230.....	59
Castner <i>vs.</i> Pocahontas Collieries Co., 117 Fed., 184.....	45
Clark <i>vs.</i> Mayfield, 3 Cranch, 353; Fed. Cases, No. 2858.....	66
Davis's case, Dyer's Rep., p. 188b.....	41
Davis <i>vs.</i> Boyett, 66 L. R. A., 258.....	66
Drew <i>vs.</i> Hogan, 26 App. D. C., 55.....	87

	Page
Edwards, <i>Ex parte</i> , 11 Fla., 174.....	105
Ellerbe, <i>In re</i> , 13 Fed., 530.....	45
Farmers' Loan & Trust Co. <i>vs.</i> Northern Pac. Co., 60 Fed., 803.....	118
Fischer <i>vs.</i> Hayes, 6 Fed., 68.....	46
Flathers <i>vs.</i> State, 125 Pa., 902.....	46
Footé, <i>In re</i> , 76 Cal., 543.....	53
Fuller's case, 12 Rep., 41.....	41
Galland <i>vs.</i> Galland, 44 Cal., 475.....	106
Gompers <i>et al.</i> <i>vs.</i> Buck's Stove & Range Co., 219 U. S., 581; 33 App. D. C., 82.....	22
Gompers <i>vs.</i> Buck's Stove & Range Company, 221 U. S., 418; 55 L. Ed., 797; 33 App. D. C., 516.....	23, 48, 147, 152
Gordon <i>vs.</i> Commonwealth, 133 S. W., 206; 141 Ky., 461.....	64
Gould <i>vs.</i> Sessions, 67 Fed., 163.....	47
Hake <i>vs.</i> People, 230 Ill., 174.....	106
Harrison's case, Cro. Car., 503.....	41
Herman <i>vs.</i> State, 74 N. W., 1097; 54 Neb., 626.....	59
Hunney's case, Howell's State Trials, vol. 2, p. 1074.....	41
Hurley <i>vs.</i> Commonwealth, 74 N. E., 677; 188 Mass., 443.....	49, 58
Hutton <i>vs.</i> Superior Court, 81 Pac., 409; 147 Cal., 156.....	58
Kansas <i>vs.</i> Vincent, 46 Kansas, 618.....	59
Kansas <i>vs.</i> Henthorn, 46 Kansas, 612.....	59
Kearney, <i>Ex parte</i> , 7 Wheaton, 38, 43.....	41
King <i>vs.</i> Almon, L. Q. R. (1908).....	36
King <i>vs.</i> Barnes, 113 N. Y., 476.....	105
Lester <i>vs.</i> People, 150 Ill., 424.....	47
Maloney <i>vs.</i> Travise, 87 Iowa, 306.....	58
May, 1 Fed., 737.....	103, 104
Merrimack River Savings Bank <i>vs.</i> City of Clay Center, 219 U. S., 527.....	107
Mullee, <i>Ex parte</i> , Fed. Cases, No. 9911.....	46
Myers <i>vs.</i> State, 46 Ohio St., 473.....	105
Nelson, <i>Ex parte</i> (Mo., 1913), 157 S. W., 794.....	106
Nomes <i>vs.</i> Cummings, 1 Lester, 40 Pittman, 1 Curt., 186; Fed. Cas., No. 11184.....	103, 104
New Orleans <i>vs.</i> N. Y. Mail Steamship Company, 20 Wall., 387.....	45, 47

CONTENTS.

vii

	Page
Nikell, <i>In re</i> , 47 Kansas, 734.....	59
Nowlan, <i>Ex parte</i> , <i>id.</i>	118
Otis vs. Superior Court of Los Angeles County, 82 Pac., 815; 147 Cal., 156	58
Patterson, <i>In re</i> , 99 N. C., 418.....	106
Peck's Trial, p. 294	61
Peck's Trial, p. 402	34
People vs. Miller, 12 Cal., 291.....	66
People vs. Neill, 74 Ill., 68.....	64
People vs. Wilson, 64 Ill., 195.....	59
Pierce, <i>In re</i> , 44 Wis., 411.....	106
Pierce vs. U. S., 37 App. D. C., 582, 589.....	48
Pollard, <i>In re</i> (5 Moore P. C. (N. S.), 111; L. R., 2 P. C., 106) .	43
Post vs. State, 7 Ohio Decisions, 257.....	58
Radley's case, 7 Howell's State Trials, p. 702.....	41
Robertson, <i>Ex parte</i> , 27 Texas App., 628.....	106
Robertson vs. Baldwin, 165 U. S., 276.....	52
Robinson, <i>Ex parte</i> , 9 wall., 505.....	60
Ryan, <i>Ex parte</i> , 62 Tex. Ct. App., 19; 136 S. W., 65.....	106
Schull, <i>In re</i> , 221 Mo., 623; 133 Am. St. Rep., 496.....	45
Secor vs. T., P. & W. R. R. Co., Fed. Cases, No. 12605.....	104
Shipp case, 215 U. S., 582	105
Shoup vs. State, 102 Tenn., 9.....	48
Sloman vs. Reilly, 95 Mich., 264.....	105
Snyder vs. State, 52 N. E., 152; 151 Ind., 553.....	58
State vs. Bilbo, 19 La. Ann., 76.....	66
State vs. Earl, 41 Ired., 464.....	103
State vs. Keene, 11 La., 596.....	105
State vs. Myers, 63 Md., 266.....	66
State vs. Pierce, 19 L. R. A., 90.....	66
State vs. Rust, 2 Tenn. (Ch.), 181.....	105
State vs. Sauvinet, 24 La. Ann., 119.....	48
State vs. Van Orden, 21 La. Ann., 119.....	48
Stewart vs. State, 140 Ind., 7; 39 N. E., 508.....	57
Stickney, <i>Ex parte</i> , 4 S. & M., 751.....	48
Thomas, <i>Ex parte</i> , 10 Mo. App., 24, 25.....	54

	Page
Thompson <i>vs.</i> State, 54 Miss., 755.....	65
Tolman <i>vs.</i> Leonard, 6 App. D. C., 224.....	104
Williamson's case, 26 Pa. State, 18.....	45
Wood, <i>In re</i> , 45 N. W., 113; 82 Mich., 75.....	58
Wood <i>vs.</i> Carpenter, 101 U. S., 135.....	66
Wraynham's case, Howell's State Trials, vol. 2, p. 1074.....	41, 42
U. S. <i>vs.</i> Ball, 163 U. S., 662-672.....	52
U. S. <i>vs.</i> Jacobi, Fed. Cases, No. 15460.....	46-50
U. S. <i>vs.</i> Kane, 23 Fed., 748.....	104
U. S. <i>vs.</i> Dodge, 2 Gall., 313	103
U. S. <i>vs.</i> Shipp, 203 U. S., 563.....	106
Worlan <i>vs.</i> State, 52 Ind., 49.....	59

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 640.

SAMUEL GOMPERS, JOHN MITCHELL, AND FRANK
MORRISON

vs.

UNITED STATES.

ON APPEAL AND WRIT OF ERROR.

BRIEF OF APPELLANTS AND PLAINTIFFS IN ERROR.

The petitioners having filed herein petitions for appeal and writ of error, which have been granted, we respectfully submit the following

Statement of Facts.

On May 16, 1911, Mr. Justice Gould, sitting in equity (Record, p. 1), certified to Mr. Justice Wright, at that time presiding in a court of law, all matters relating to an alleged violation by certain defendants of an injunction order here-

tofore issued, for whatever action was appropriate to be taken. This order was made in the equity case of the Buck's Stove & Range Company *vs.* The American Federation of Labor and at the time of its making there was nothing pending in the equity court pertaining to any such violation.

On the same day (Record, p. 2), by an order filed in a new cause entitled "In Equity, No. 30,180," and signed by Mr. Justice Wright, it is recited that it appeared to the court that there was reason to believe that Samuel Gompers, John Mitchell, and Frank Morrison were guilty of contempt of the Supreme Court of the District of Columbia, in wilfully violating the terms of an order of injunction issued on or about December 18, 1907, in Equity No. 27,305, entitled "The Buck's Stove & Range Company *vs.* The American Federation of Labor *et al.*," and thereupon the court ordered that J. J. Darlington, Daniel Davenport, and James M. Beck be empowered to inquire whether there was reasonable cause to believe the said persons guilty as stated, and if so, they were directed forthwith to prepare, file, present, and prosecute against them charges of contempt of court.

Samuel Gompers.

Under such order of May 16, the said committee reported, in the case of Samuel Gompers (Record, p. 2), that the equity court had granted, on December 18, 1907, an injunction restraining Samuel Gompers and others from boycotting, in the manner therein set out, the business of the Buck's Stove & Range Company, and that such decree of injunction *pendente lite* was followed (Record, p. 4), on March 23, 1908, by a final decree enjoining them from doing any of the things set out in the decree of December 18, 1907, and that there was reasonable ground to believe, and it was charged, that he had been guilty of contempt in wilfully violating the terms of the said injunction in the following particulars:

1. Because of the circulation of a large number of copies of the January, 1908, *American Federationist*, of which he was editor, containing the name of the Buck's Stove & Range Company on the "We Don't Patronize List," such circulation being through the American News Company, and that he hurried such printing to anticipate the issuance of the injunction.

2. That after the filing of the injunction undertaking he further circulated, through the mails and otherwise, the January, 1908, *Federationist*, containing the list aforesaid.

3. That after December 23, 1907, he circulated and permitted to be circulated publicly several thousand copies of the printed proceedings of the convention of the American Federation of Labor held at Norfolk, Virginia, in November, 1907, which referred to the name of the Buck's Stove & Range Company in connection with the "We Don't Patronize List," and which in addition contained:

(a) Report by said Gompers to the convention discussing the legality of the boycott and the necessity of an appeal for the change of any law curbing it, and suggesting that in the event of an injunction being issued there could be added after the name of an unfair firm and the statement of grievance complained of, the words "We have been enjoined by the courts from boycotting this concern";

(b) An editorial written and published by him, of which he had circulated thirty thousand copies, discussing an opinion of Justice Gould rendered in the case, which editorial was originally published in the February, 1908, *Federationist*, the particular matter complained of appearing on the record on pages 6 and 7.

4. Following the injunction order of December 18, he published in the February, 1908, *Federationist*, a copy of the decree of injunction, with an editorial as to its effect,

which was immediately followed by articles and editorials in journals, etc., published in the interest of the affiliated bodies composing the Federation of Labor.

5. That on or about January 24, 1908 (Record, p. 9), he united with Frank Morrison, John Mitchell and others in circulating many thousand copies of a paper designated by them as "An Urgent Appeal for Financial Aid in Defense of Free Press and Free Speech," and caused the same to be printed in the February, 1908, *Federationist*, and that he caused to be reprinted and circulated, with the Urgent Appeal, thousands of copies of the editorial contained in the February, 1908, *Federationist*, which editorial is set out in paragraph 4, for the purpose of suggesting to members of the Federation and others in sympathy that they might violate the injunction of the court and defeat its object and purpose provided they were not or should not come within the territorial limits of the District of Columbia.

6. That in March, 1908, *Federationist*, he published in the editorial columns the following:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

7. That in the April, 1908, *Federationist*, issued after the final decree of the court making perpetual the injunction *pendente lite*, he published an editorial containing the following:

"The temporary injunction issued by Justice Gould, of the court of equity of the District of Columbia, in the (Van Cleave) Buck's Stove & Range Company of St. Louis against the American Federation of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia.

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

"And in another column of the April, 1908, copy of the *Federationist*, the said Samuel Gompers published the following:

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove & Range Company of St. Louis. Fellow-workers, be true and helpful to yourselves and to each other. Remember that united effort in the cause of right and justice must triumph."

8. That in a public address to an audience of working people in the city of New York April 19, 1908, he said:

"They tell us that we must not boycott. Well, if the boycott is illegal, we won't boycott. But I have no knowledge that any law has been passed or any order issued by any court compelling us to buy, for instance, a range or a stove from the Buck's Stove and Range Company. You know that myself and several are enjoined from telling you, and we are not prepared to tell you, that the Buck's Stove and Range Company is unfair. There are a number of men who have been having suit brought against them for two hundred and forty thousand dollars. That is not very much, between you and me; but a few hatters in Danbury, Connecticut, are being sued for saying that Loewe & Company, hat manufacturers of Danbury, Connecticut, are unfair. I am not prepared to say that that is in violation—that they are unfair."

"Of course, in the case of the Buck's Stove and Range Company, if I told you that the Buck's Stove and Range Company was still unfair, when I got back to Washington tomorrow or some place where they say people play checkers with their noses—well, as I say, I am not prepared to tell you that these things are unfair. But there is no law, no court decision that compels you to buy them, nor does any law compel you to buy anything without the union label."

9. That in a public address before a large gathering of working people, about May 1, 1908, in Chicago, he said:

"I might say just parenthetically about the hat-
ters' case that you are not now permitted to boycott
the Loewe hats, but I want to call your attention to
the fact that there is no law compelling you to wear
a Loewe hat, nor has any judge issued a mandamus
compelling you to buy a Loewe hat. That applies
equally to Mr. Van Cleave's stoves and ranges. And,
by the way, I don't know why you should buy any
of that sort of stuff, I don't; but that is a matter to
which we can refer more particularly in our organi-
zations."

10. That in the July, 1908, *Federationist*, he published
an editorial as follows:

"The Supreme Court of the District of Columbia
has made permanent the injunction issued by Justice
Gould enjoining the American Federation of Labor,
its officers, its affiliated unions and their members
and friends from declaring that the Van Cleave
Buck's Stove and Range Company of St. Louis is on
the unfair list of the American Federation of Labor
or the publication of that statement in the *American
Federationist*. An appeal will be taken to the Court
of Appeals of the District of Columbia, and, if neces-
sary, to the United States Supreme Court. The in-
junction does not compel any one to buy the Van
Cleave Buck Stoves and Ranges, nor has any decree
been issued compelling any one to buy Loewe's hats."

11. That in the September, 1908, *Federationist* he pub-
lished the following:

"We have also witnessed in the past year most
serious judicial invasion and usurpation of individual
liberty and human freedom by the abuse of the writ
of injunction.

"An attempt has been made by the abuse of the
writ of injunction to deny and prohibit the freedom
of speech and the freedom of the press; and men

have been cited to show cause why they should not be punished purely for the right of free press and free speech—rights not only natural and inherent in themselves, but guaranteed by the Constitution of our country, and which our forefathers fought to save, and which a free people never dreamed would ever be placed in jeopardy.”

12. That in his report to the Executive Council of the Federation, dated September 9, 1908, and thereafter published in the *American Federationist* in November, 1908, he discussed at length the suit above referred to, under the title of the “Buck’s Stove & Range Company Injunction Suit,” the language of which is set forth in the record, page 12.

13. That in an address in Indianapolis, September 29, 1908, he discussed at length the suit above referred to.

14. That in a public address in Baltimore, Maryland, about October 26, 1908, he further discussed the said injunction suit.

15. That at a reception tendered by labor organizations in November, 1908 (Record, p. 13), he discussed at length the same suit and the injunctions referred to.

16. That in a report made by him to the convention of the Federation of Labor, held November, 1909, he further discussed the injunction granted on December 18, 1907, as follows:

“When a judge so far transcends his authority and assumes functions entirely beyond his power and jurisdiction; when a judge will set himself up as the highest authority in the land, invading constitutionally guaranteed rights of citizens; when a judge will go so far in opinion, decision, and action, that even judges of Court of Appeals have felt called upon to criticise his action, ‘unwarranted’ and ‘fool-

ish,' under such circumstances it is the duty of the citizen to refuse obedience and to take whatever consequences may ensue."

The committee further reported that all of the foregoing publications, statements, and acts were in violation of the injunction decree in the equity causes referred to and were done for the purpose of inducing others to disregard and violate the injunction of the court and defeat it, and that in each of them the said Gompers was guilty of contempt of court and had subjected himself to punishment therefor.

There was attached to the foregoing report, which was under oath, as exhibits, the decrees mentioned of December 18, 1907, and March 23, 1908, given below, to which we add the amended decree of the Court of Appeals on appeal in the original cause.*

* EXHIBIT "A."

Preliminary Injunction of December 18, 1907.

This cause coming on to be heard upon the petition of the complainant for an injunction *pendente lite* as prayed in the bill, and the defendants' return to the rule to show cause issued upon the said petition having been argued by the solicitors for the respective parties, and duly considered, it is thereupon by the court, this 18th day of December, A. D. 1907, ordered that the defendants, The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper, and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product and from abetting, aiding or assisting in any such

boycott, and from printing, issuing, publishing, or distributing through the mails or in any other manner, any copies or copy of the "*American Federationist*," or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize" or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention of complainant's customers, or of dealers, or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other States and Territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid.

And it is further ordered by the court that this order shall be in full force, obligatory and binding upon the said defendants, and each of them, and their said officers, members, agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them upon the service of a copy hereof upon them or their solicitors or solicitor of record in this cause: Provided the complainant shall first execute and file in this cause, with surety or sureties, to be approved by the court or one of the justices thereof, an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitably suing out this injunction, and stipulating that the damages may be ascertained in such manner as the justice of this court shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

ASHLEY M. GOULD, *Justice*.

• • • • • • •

EXHIBIT "B."

Final Decree of March 23, 1908.

The above entitled cause coming on at this time for final hearing, and having been submitted to the court by the respective parties, through their solicitors, upon the pleadings and the evidence, and having been duly considered, it is thereupon by the court this 23d day of March, A. D. 1908, adjudged, ordered, and decreed that the defendants The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper, and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are perpetually restrained and enjoined from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm, or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing or distributing through the mails, or in any other manner, any copies or copy of the "*American Federationist*," or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize" or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating whether in writing or orally, any statement or notice of any kind or character whatsoever, calling attention to the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "Unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant and from threatening or intimidating any person or persons

whomsoever from buying, selling or otherwise dealing in the complainant's product, either directly or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other States and Territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid. And it is further adjudged, ordered, and decreed that the complainant recover against the defendants the costs of this suit, to be taxed by the clerk, and that it have execution therefor as at law.

HARRY M. CLABAUGH.

Chief Justice.

EXHIBIT "C."

Amended Decree of Court of Appeals.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, modified and affirmed as follows:

It is adjudged, ordered and decreed that the defendants, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper, and Edward L. Hickman, individually and as representatives of the American Federation of Labor, their and each of their agents, servants, and confederates, be, and they hereby are, perpetually restrained and enjoined from conspiring or combining to boycott the business or product of complainant, and from threatening or declaring any boycott against said business or product, and from abetting, aiding or assisting in any such boycott, and from directly or indirectly threatening, coercing or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in complainant's product, and from printing the complainant, its business or product in the "We Don't Patronize" or "Unfair" list of defendants in furtherance of any boycott against complainant's business or product, and from referring, either in print or otherwise, to complainant, its business or product, as in said "We Don't Patronize" or "Unfair" list in furtherance of any such boycott. The costs of this appeal are equally divided between appellants and appellee.

Per Mr. Justice ROBB.

March 11, 1909.

John Mitchell.

On the same day (Record, p. 135) the same committee reported as to John Mitchell that there was reasonable cause to believe that he was guilty of violating the terms of an injunction issued in the same case, and after recitals as to the decrees, he was charged with contempt in the following particulars:

1. That as one of the Vice-Presidents of the Federation and a member of its Executive Council, he united with Samuel Gompers, Frank Morrison, and others in printing and widely circulating several thousands of the "Urgent Appeal," hereinbefore referred to, and also caused the same to be printed in the February, 1908, *Federationist*, and caused to be circulated in connection with the said "Urgent Appeal" thousands of copies of a reprint of an editorial in the February, 1908, *Federationist*, hereinbefore referred to.

2. That with full knowledge of its contents, he caused and assisted in causing thousands of copies to be circulated of the injunction of December, 1908, with an editorial comment thereon indicating that persons outside of the District of Columbia might violate the injunction and defeat its object and purpose, provided they should not come within the territory of the District of Columbia.

3. That on or about January 25, 1908, he presided over a meeting of the United Mine Workers of America, associated with the Federation of Labor, and entertained, put to a vote and declared adopted a resolution placing the Buck's stoves and ranges on its unfair list, and providing that any member of the United Mine Workers purchasing a stove of that make should be fined five dollars, and, failing to pay the same, be expelled, and that subsequently, in an address before a convention of the Mine Workers at Indianapolis, he used the language set out in full on page 141 of the record.

The committee further reported that all of these publications, statements, and acts were in violation of the injunction decree of the court in said equity cause and for the purpose of inducing others to disregard and violate the injunction of the court and defeat it, and that in each of them he was guilty of contempt. This report was also sworn to.

Frank Morrison.

The committee, on the same day, further reported that Frank Morrison had been guilty of contempt in wilfully violating the terms of an injunction issued by the court in the case above mentioned in the following respects:

1. As Secretary of the Federation, he became, on or about December 31, 1907, custodian of 9,000 copies of the printed proceedings of the 1907 Convention, which set out the name of the Buck's Stove & Range Company in connection with the "We Don't Patronize List," and contained resolutions adopted by the Federation requesting each central body affiliated with it to appoint a committee to conduct and manage a campaign among the membership as well as among dealers in stoves and ranges in their locality, and thoroughly inform them as to the attitude of the President of the said company toward organized labor and report to the officers the progress of the said campaign, together with a complete list of dealers handling and selling the same, and that the commissioned organizers should report to the officers, and that he caused 6,000 copies thereof to be published and distributed throughout the United States, in violation of the injunction of December 18, 1907.

2. That on or about January 24, 1908, he joined with Samuel Gompers, John Mitchell and others in printing and widely circulating many thousands of the "Urgent Appeal," hereinbefore referred to, and causing the same to be printed in the February, 1908, *Federationist*, and in causing to be

reprinted and circulated thousands of copies of the *Federationist* containing language set out on pages 175 and 176 of the Record.

3. That he also caused and assisted in causing to be reprinted and widely circulated thousands of copies of the editorial in the February, 1908, *Federationist*, containing a copy of the injunction of December 18, 1907, together with the editorial entitled "Order Granting Injunction," discussing its effect, hereinbefore referred to.

4. That he aided and co-operated with Samuel Gompers and others in circulating and causing to be circulated, after the injunction issued by this court, many copies of the *Federationist* for January, February, March, April, June, and September, 1908, referring to the Buck's Stove & Range Company in connection with the "We don't patronize list," and made editorial and other reference to the said company in connection therewith and to the boycott declared by the Federation and the desirability of continuing and prosecuting the same against it notwithstanding the said injunction, until it should enter into an agreement satisfactory to the labor organizations.

All of said publications, statements and acts are recited to have been in wilful violation of the injunction decree of this court and done for the purpose of inducing others to disregard and violate the injunction and defeat it, and in each of the same he was guilty of contempt of court and had subjected himself to due punishment. This report is also under oath and there is attached to it the same exhibits as before.

Upon the filing of these several reports, rules to show cause were issued dated June 26, 1911 (Record, pp. 19, 146, 182), requiring the defendants to show cause why they should not be adjudged to be in contempt of the orders and decrees of the court in said equity cause. Upon the expiration of the time set in the rule, each of the respondents moved the court to set aside the report submitted, for cause alleging that the order referring the cause to the committee called for the ex-

ercise of judicial discretion and that no one of said committee was in a position to exercise the same and did not exercise it, and that every one had repeatedly, prior to his appointment, expressed in positive terms his conviction of the guilt of the respondents as to the charge which they had formulated subsequently against them, and further that the members of the committee, while appearing on the record for the Buck's Stove & Range Company, were in fact employed and paid by the American Anti-Boycott Association and National Manufacturers' Association, and that the settlement between the Buck's Stove & Range Company and the Federation of Labor did not set these attorneys free from the legal and moral obligation to carry on the prosecution for the benefit of the associations compensating them, and that hence their action was not and could not be judicial (Record, pp. 21, 148, 185). In this connection the respondents filed (Record, pp. 22 and 23, 149, 150, 186, and 187) extracts from speeches made by several members of the committee showing their animus and prejudgment of the case. In response, Mr. Darlington and Mr. Davenport filed their affidavits (Record, pp. 27 and 29, 153, 154, 189, and 190), from which it appears Mr. Darlington received several remittances in aid of the prosecution of the Buck's Stove & Range Company case from the treasurer of the Anti-Boycott Association, although he had had no conference with any members of it or of the National Manufacturers' Association and received no instructions from it, and that his connection had terminated with the arguments before the Supreme Court at the October term, 1910, and that he was not employed to prosecute the present case by said associations. He denied bias or prejudice against the respondents and stated that Mr. Beck was out of the country. Mr. Davenport stated that he had for eight years been employed by the Anti-Boycott Association and was so employed in the Buck's Stove & Range Company suit (Record, p. 29), but that his connection with that controversy and the Anti-Boycott Association concluded with the decision in the litigation before the Supreme Court of the United States at the

October, 1910, term, and that he had no interest or connection whatsoever with the pending proceedings except such as devolved upon him by his appointment; that he is not and never was counsel for the National Manufacturers' Association, and that he had no hostile bias or prejudice against the respondents.

Thereupon (Record, pp. 66, 167, 202), the motion to dismiss was overruled and an exception noted.

On July 17, in the case of each of the several defendants, there was filed a motion to dismiss upon the ground that the order of injunction alleged to have been violated was not made by Justice Wright, before whom the proceeding was brought, and that when the order was made he was not a member of the bench of the Supreme Court of the District making it, and not a member of it on the date of the motion, and had no jurisdiction or authority to preside over the proceedings (Record, pp. 26, 146, 183). The motion was further based upon the proposition that there was nothing pending at the time in the equity cause to be certified. The motion was overruled and an exception noted (Record, pp. 66, 163, 201).

For answer to the charges against him Mr. Gompers filed the following:

"Samuel Gompers, for answer to the charges against him, says:

"1. That he is not guilty of them or any of them.

"2. That the matters and things complained of in paragraphs 1 to 10, inclusive, and in each of said paragraphs, did not occur within 3 years before the bringing of this action.

"3. That the matters and things complained of in paragraphs 1 to 4, inclusive, and in each of them, occurred, if at all, as the court well knew, more than 3 years before the commencement of this action, and that any complaint with relation thereto is barred because of laches on the part of the court or judges assumed or alleged to have been affected thereby.

"4. That the delay in the presentation of the

charges in this action has been so unreasonable that this respondent should not be called upon to answer them."

Mr. Mitchell filed a like answer (Record, p. 160), as did Mr. Morrison (Record, p. 197).

To the answers referred to no formal replications were filed, whereupon the several defendants (Record, pp. 40, 161, 198) filed motions to dismiss upon the following grounds:

"1. There has been no proper replication filed to the plea of the statute of limitations presented by him, it appearing upon the face of the said information and charges that many of the actions complained of therein, occurred more than 3 years before the filing of said information and charges.

"2. No pleading has been filed herein offering any justification or excuse for the laches in bringing this proceeding on the part of the court assumed or alleged to have been treated with contempt by the actions with which respondent is charged, in the aforesaid information and charges, as set forth in this respondent's answer filed herein.

"3. No pleading of any kind has been filed to account for the unreasonable delay in the institution of these proceedings, as alleged in this respondent's answer filed herein."

This motion was overruled (Record, pp. 40, 161, 198), and at the same time an opinion was rendered by Mr. Justice Wright (Record, pp. 41-62), in which is largely discussed the question as to whether the respondents had been charged with crime and were the subjects of a criminal information, and whether the statute of limitations applied to offenses of the nature of those charged.

At the same time, the cause was referred to Albert Harper, United States commissioner, to take testimony, and a time limit placed thereon, to the making of which orders (Record, pp. 63, 152, 199) respondents excepted. Thereafter the

taking of testimony was proceeded with in open court, a large number of witnesses being examined and many printed exhibits being presented. The objections to the evidence based upon the lapse of three years were at all times insisted upon. The original order alleged to have been violated was produced, as well as, over the objection of respondents' counsel, the order of March 23, 1908. No evidence whatsoever was produced showing the existence of any unlawful boycott after the going into effect of the order of December 18, 1907, except the passage of a resolution of the United Mine Workers of America on January 25, 1908, which reads as follows:

"Whereas, The Buck's Stove and Range Company, of St. Louis, Mo., have taken legal steps to prevent organized labor in general, and the officers and executive committee of the A. F. of L. in particular, from advertising the above-named firm as being on the 'Unfair' or 'We Don't Patronize' list, and

"Whereas, By the issue of such an injunction or restraining order as prayed for by the above-named firm, organized labor will be deprived of one of its most effective weapons, and

"Whereas, J. W. Van Cleave, the president of above-named firm, also president of the National Manufacturers' Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"*Resolved*, That the U. M. W. of A., in Nineteenth Annual Convention assembled, place the Buck's stoves and ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above make be fined \$5.00, and failing to pay the same be expelled from the organization."

It did not appear from the testimony that any steps whatsoever had been taken after the passage of this resolution to put it into effect.

Among the evidence adduced was the statement of Mr. Gompers in the April, 1909, *Federationist*, reading as follows:

"A Self-inflicted Boycott."

"If ever there was a self-inflicted and personally conducted boycott, it has been that engineered by the Van Cleave Buck's Stove & Range Company against itself. Its hostile, sensational and unjust attacks upon the men of labor and their organizations have supplied the material for keeping the boycott fresh in the minds of all purchasers. It has been the action of the Buck's Stove & Range Company itself, far more than anything labor has done, which has made this the most spectacular boycott of our time.

"While the Buck's Stove & Range Company was published on the 'We Don't Patronize' list of the *American Federationist*, along with a number of firms whose relations with organized labor were unfair, yet this firm attracted 1.5 more attention than many of the others until Mr. Van Cleave, through his man Brandenburg and the Pinkerton and Turner detective agencies began a crusade of character assassination against the men who had devoted their lives to securing the rights and liberties of their fellow-men. Mr. Van Cleave, being president of the Buck's Stove & Range Company, and also president of the National Manufacturers' Association, all his hostile acts took on an intensified meaning to the men of labor. The real activity in the boycott began when an application for an injunction against the American Federation of Labor to restrain it from boycotting this firm followed the personal attacks upon the men of labor. Then, indeed, the union men and their friends from the Atlantic to the Pacific sat up and took notice and remembered the unfair standing of this firm when they were buying goods.

"When the temporary injunction was issued prohibiting the exercise of the right of free press and free speech and the daily press rang with statements of the case in relation to the Buck's Stove & Range Company, then indeed did many people who had not been concerned with the attitude of labor in any other boycott conclude that they would not purchase such goods. Then there was the making permanent of the temporary injunction, and the appeals for

funds by the American Federation of Labor with which to carry the case to higher courts. There was the president's report to the conventions, the actions of two conventions—all despite the clause of the original injunction prohibiting the exercise of free press or free speech in relation to the Buck's Stove and Range Company. It was these things which kept the boycott fresh in the minds of the workers and their friends and aroused the most intense interest. Every hostile move of the Van Cleave Buck's Stove and Range Company, every action leading to greater publicity of the case increased the boycott. It must be remembered, too, that the injunction did not and does not apply beyond the District of Columbia.

"The labor press of the country and the official journals of the various trades felt entirely free to publish the non-union and hostile status of the Van Cleave Buck's Stove and Range Company and to comment freely upon the original injunction and contempt proceedings. The institution and prosecution of the proceedings for contempt of the injunction and the sentence of Gompers, Morrison, and Mitchell to imprisonment for contempt made every union man and every patriotic citizen realize that while constitutional rights are greater than property rights a strong effort was being made to establish the contrary. By a perfectly understandable mental process all these happenings kept before the public the fact that labor had a formal boycott against the Buck's Stove and Range Company, hence we repeat the Buck's Stove and Range Company has been the most potent agent in fastening upon itself a boycott—primary, secondary and possibly everlasting—because it has assumed that the courts of the land would bolster up its every attack upon the workers regardless of how far it invaded the inherent and constitutionally guaranteed rights of the people."

It will be noted that the foregoing was introduced improperly as rebuttal, that it is not charged in the committee's reports, and that it is not the admission of any unlawful act on the part of any of the respondents, but at the most a statement of belief as to the probable effect of certain things

referred to, given long after the occurrences of the events mentioned.

Knowledge on the part of the respondents of the existence of any unlawful boycott against the Buck's Stove & Range Company during the period described in this report was at all times and in every phase denied and no evidence adduced to overcome these denials.

At the conclusion of the giving of the evidence, respondents' counsel (Record, p. 746) moved to quash the proceedings because they were in equity and there was no equity court having any power to conduct proceedings of this sort, they being criminal, which motion was overruled by the court, and an exception noted.

Thereafter (Record, p. 70), Mr. Justice Wright delivered his opinion, finding the respondent Samuel Compers guilty of willfully violating the terms of the injunctions and sentencing him to jail for twelve months (Record, p. 141), finding the respondent Morrison also guilty of violating the terms of the injunctions and sentencing him to jail for six months (Record, p. 204), and finding the respondent John Mitchell guilty of contempt in violating the terms of the injunction of December 18, 1907 (Record, p. 169), and sentencing him to jail for nine months.

From the decrees above enumerated an appeal was taken to the Court of Appeals, and upon its hearing, the court divided, Justice Van Orsdel delivering the opinion of himself and Justice Robt. and Chief Justice Shepard dissenting. The majority opinion sustained the conclusion of the court below that the several respondents had been guilty of the various acts of contempt charged against them, and sustained its action in overruling in the several respects in which it had been offered the defense of the statute of limitations, holding that such defense was only good as against a prosecution by indictment or criminal information, and that the information filed in this case, not being prosecuted by the ordinary prosecuting officers of the Government, was not to be considered as criminal. The ma-

jority thereupon, considering further that there had been an abuse of judicial discretion in the degree of punishment awarded the defendants, directed that the judgment below be reversed and the cause remanded with instructions to the court below to enter orders in proper form, adjudging the respondents respectively guilty of contempt of court, and imposing a sentence upon Gompers of imprisonment of thirty days, and upon Mitchell and Morrison each a fine in the sum of \$500.00.

It seems advantageous at this time to indicate the history of the prior actions. The original suit for injunction, because of alleged boycott, entitled "*Bucks Stove & Range Company vs. American Federation of Labor*, equity, 27,305," was filed in the Supreme Court of the District of Columbia August 19, 1907. The preliminary restraining order was granted by Mr. Justice Gould December 18, 1907, and went into effect December 23, 1907. The final decree in said cause was signed and went into effect March 23, 1908. An appeal was taken to the Court of Appeals and was heard in due course and decided on the 11th day of March, 1909 (33 App. D. C., p. 83), that court materially modifying and restricting the operations of the decrees below. Cross-appeals were taken to the Supreme Court of the United States, and pending their hearing an adjustment was had between the parties, so that when these appeals came on to be heard the Supreme Court, on the 20th day of February, 1911 (219 U. S., 581), refused to disturb the decree of the Court of Appeals, leaving the parties where it found them.

The original proceedings in contempt, entitled in the same cause, were instituted by a petition filed in the Supreme Court of the District of Columbia on July 20, 1908. These proceeded to a decree, dated December 23, 1908, adjudging the several respondents guilty of contempt and inflicting the like penalty as adjudged in the pending proceedings. From this judgment or decree an appeal was taken to the Court of Appeals, which, considering that the case should have

come before it by bill of exceptions, declined to examine the record of testimony and affirmed the judgment or decree of Mr. Justice Wright on the 2d day of November, 1909 (33 App. D. C., 516). Thereupon a petition for a writ of certiorari was filed in the Supreme Court of the United States and granted December 6, 1909 (215 U. S., 605), and after hearing, the Supreme Court of the United States, on May 15, 1911 (221 U. S., 418), set aside the decree of Mr. Justice Wright, finding that the contempt, if any, which had been committed was civil, and that the punishment inflicted had been that appropriate to criminal contempt, remanding the case to the Supreme Court of the District of Columbia, with direction that the contempt proceedings instituted be dismissed—

“but without prejudice to the power and right of the Supreme Court of the District of Columbia to punish, by a proper proceeding, contempt, if any, committed against it.”

Specifications of Error.

In the presentation of the petition for certiorari and in this brief, we rely upon the following assignments of error committed by the Court of Appeals in its conclusions of fact and law:

1. The said court did not pass expressly upon error assigned in the proceedings below, wherein that court overruled motion to quash the same upon the ground that they were criminal in their nature, these proceedings being brought in equity.

2. It did not expressly pass upon the error committed by the court below in overruling the motion to set aside the report submitted by the committee.

3. It did not pass upon the error committed by the court below in refusing to strike out the names of the committee

and substitute the name of the attorney of the United States for the District of Columbia, the committee having been biased by reason of their employment as attorneys for the plaintiff in the suit of the Buck's Stove and Range Company *vs. Samuel Gompers et al.*

4. The majority of the Court of Appeals erred in sustaining the court below in refusing to dismiss these proceedings, no proper replication having been filed to the plea of the statute of limitations.

5. The majority of the Court of Appeals erred in sustaining the court below in overruling the plea of the statute of limitations herein.

6. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold any respondent guilty of the charges made against him, or of any of them.

7. The majority of the Court of Appeals erred in holding this respondent guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

8. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by any respondent after December 23, 1907.

9. The majority of the Court of Appeals erred in not finding that any charges against any respondent were barred by the statute of limitations.

10. The majority of the Court of Appeals erred in finding the respondents guilty of the charges against them, and also in so doing relying on matters not in evidence and on charges not sustained.

11. The majority of the Court of Appeals erred in inflicting a criminal punishment when sitting otherwise as a court of equity.

12. That these respondents by their appearance and answers purged themselves of any possible charge of contempt, but that nevertheless the Court of Appeals erred in holding them guilty thereof.

ARGUMENT.

Theory as to Real Nature and Effect of Charges.

7. THE MAJORITY OF THE COURT OF APPEALS ERRED IN HOLDING THIS RESPONDENT GUILTY OF VIOLATIONS OF THE INJUNCTION OF MARCH 23, 1908, NO VIOLATION THEREOF HAVING BEEN CHARGED.

Before discussing any of the specifications of error in detail, except the above, some general observations should be made with regard to our theory as to the real nature and effect of the charges made against the respondents. These proceedings were first entitled in equity cause No. 27305, Buck's Stove and Range Company *vs.* American Federation of Labor, and were commenced on May 16, 1911. The preceding day an opinion had been given in the Supreme Court of the United States, in the equity cause recited, ordering dismissed a prior contempt proceeding without prejudice to the power and right of the Supreme Court to punish by a proper proceeding the contempt, if any, committed against it. On the date in question, however, there was nothing pending in the Supreme Court of the District of Columbia in the original case. There had been a settlement had between the parties to that suit, and because of such fact the

Supreme Court of the United States had refused to take any cognizance of it, but left the parties in the position in which it found them. Properly considered, therefore, on the date in question there was nothing whatsoever before the court. Nevertheless, Mr. Justice Gould, sitting in equity, of his own motion, referred to Mr. Justice Wright, at that time sitting in another court, "all matters pertaining to an alleged violation by certain defendants herein of the injunction order theretofore issued," etc. The authority for such certification does not appear in the rules, and the only statutory provision covering the matter is in section 67 of the District Code, which has no relation whatever to such a case as the present, there having been no cause, in the sense of a pending action, waiting to be heard or tried, and which could be certified. The section reads as follows:

"By mutual consent and arrangement between justices, civil causes may be certified by any justice holding a circuit court to any justice holding a criminal court for trial in the latter; and, by similar arrangement, *any cause* may be certified by any justice to another justice, *to be heard or tried* by the latter, except that a criminal case can *only be certified for trial* from one criminal court to another criminal court. In the absence of *any* justice assigned to a special term, such special term may be presided over and its business conducted by any other justice."

Immediately upon the reference being made to Mr. Justice Wright, he passed an order in a newly entitled cause in the Supreme Court of the District of Columbia, denominated equity, 30180, in the matter of Samuel Gompers, John Mitchell, and Frank Morrison, which recited that

"It appearing to the court that there is reason to believe that Samuel Gompers, John Mitchell, and Frank Morrison are guilty of contempt of the Supreme Court of the District of Columbia, in wilfully violating the terms of an order of injunction issued by the court on or about the 18th day of December, A. D. 1907, in the cause numbered equity, 27305,

and entitled The Buck's Stove and Range Co., plaintiff, *versus* The American Federation of Labor, Samuel Gompers *et als.*, defendants, it is ordered: That J. J. Darlington, Daniel Davenport, and James M. Beck, Esqs., be and they are hereby appointed, authorized, and empowered to inquire whether there is reasonable cause to believe the said persons guilty as aforesaid. And, if yea, they are hereby empowered and directed forthwith to prepare, file, present, and prosecute against the persons hereinbefore first named charges of contempt of court: to the end that the authority of the court be established, vindicated, and sustained."

It will be noted so far that there was nothing pending before the Supreme Court of the District of Columbia in equity, 27305, relating to any alleged contempt at the time the order of certification was made, and it will further appear that a new caption entirely was used, being an equity caption, with a recital that "it appearing to the court," etc., when in point of fact in equity cause 30180 there was absolutely nothing of any kind whatsoever before the court upon which such recital could, by any legal possibility, be based. The order, therefore, was, legally speaking, the voluntary and unsupported act of the court, without any foundation in the cause in which it was made.

With this introduction, let us consider the exact terms of the order itself in its relation to the succeeding pleadings. It will be noted that the thing said to have appeared to the court, and which the committee was authorized to inquire into, was whether there was reasonable cause to believe the respondents guilty of contempt in wilfully violating the terms of an order of injunction issued by the court on or about December 18, 1907, in equity cause 27305. Their authority, therefore, was limited to one particular thing—the determination of the violation of the preliminary restraining order. There is reason to believe that this is exactly what the committee understood its functions to be. When it reported to the court, as it did on June 26th, it recited the direction by the court's order of May 16th, to

inquire whether the several respondents had been guilty of contempt in wilfully violating the terms of an injunction issued by the court in equity, 27305, and it reported that there was reasonable ground to believe that the several respondents were guilty "as aforesaid." It appears from the report of the committee that an injunction *pendente lite* was granted on December 18, 1907, which became operative on December 23d of the same year. A copy of this injunction is attached to the several reports. There is a recital that it was followed by a final decree passed March 23, 1908, restraining and enjoining the defendants from doing any of the things prohibited by the decree of December 18, 1907, and a copy is attached, by reference to which it will be discovered that the decree of March 23, 1908, was an absolutely new decree, not in any way continuing or extending or making perpetual the original decree *pendente lite*, and not confirming it, but terminating it by its own terms, because by them it only existed "until the final decree."

A later reference in the committee's report to the final decree described its view of the condition (Record, p. 10) when it spoke of the issuance of the *American Federationist* "after the final decree of this court in the said equity cause, in effect making perpetual the injunction *pendente lite*," the committee carefully abstaining from the statement of more than their legal conclusion, resultant upon the fact that when one decree terminated another decree began.

That the powers of the committee were limited to a determination as to whether there had been violations of the preliminary injunction, and that the committee so understood them to be limited, is further manifest from the very careful wording of the conclusions of the several reports, as, for instance (p. 14), in the case of Samuel Gompers it being said that his publications, etc., were in wilful violation of the injunction *decree* and for the purpose of inducing others to disregard and violate the *injunction* of this court, and thereby to defeat it.

It is true that after the coming in of the report Mr. Justice Wright signed a rule which called upon the respondents to

show cause why they were not guilty of contempt in wilfully violating the terms of the *injunctions* issued in the Buck's Stove & Range Company case, and why they should not be adjudged to be in contempt of the *orders* and *decrees*, and be punished therefor.

The above recital will show that until the issuance of the rule to show cause, there was no suggestion that the respondents were charged with anything except a violation of the preliminary injunction, and the importance of this situation will appear from the following considerations.

The injunction order of December 18, 1907, expired by its terms upon the making of the final order. The final order was made on March 23, 1908. The committee's report was filed on June 26, 1911, 3 years and 3 months after the expiration of the decree alleged to have been violated. If, therefore, the respondents' contention, subsequently to be discussed, that a 3 years' period of limitation barred acts of contempt, be correct, and the original order expired March 23, 1908, every act legally complainable of in the committee's report was barred of punishment 3 months and 3 days before the report was made to the court.

Even if the respondents' contention relative to the proper interpretation to be given to the committee's report be incorrect, yet if their general position with regard to the statute of limitations is sound, nearly every act recited in the committee's reports was barred, because there is little complaint made in such reports of acts occurring within 3 years of June 26, 1911.

It may be suggested that it is immaterial that the committee reported only relative to violations of the preliminary injunction, because the court had a perfect right to act of its own volition, believing the offense of contempt to have been committed and could direct rules to show cause without affidavit, complaint, or information relative to violations of the final order. This, however, in our opinion, would be clearly and absolutely erroneous. It is impossible so far as our studies have extended, and in our belief, to find any case whatsoever in the books where an indirect contempt com-

mitted beyond the presence of the court, and which the court may only have knowledge of through another, where prosecution has been had or allowed, except upon affidavit or sworn complaint or information. This has been the course taken in every case which will be cited in this brief, and is the only course recognized as permissible by the direct language of all authorities, many of which are cited under later headings.

The deductions from the foregoing may be summed up as follows:

1. The equity court having nothing before it at the time of the certification, the principal case having gone by appeal in regular course to the Supreme Court of the United States, and the contempt case being before the Supreme Court of the United States on certiorari, there was nothing whatever to be certified to Mr. Justice Wright. An intangible criminal contempt was incapable of certification. It could not appear to Mr. Justice Wright, as there was nothing before him, that any contempt had been committed, and furthermore, the recital that it did so appear was made in an equity cause of an entirely new number, in which there were no entries whatsoever.

2. The direction of Mr. Justice Wright to the committee had relation to no act of contempt except such as might have been alleged to have been committed against the provisions of the order of December 18, 1907.

3. The report of the committee had relation only (because the committee's functions were limited and were so understood by it) to violations of the order of December 18, 1907.

4. The rules to show cause, signed by Mr. Justice Wright, if intended to be based upon supposed violations of the decree of March 23, 1908, were void to that extent as having no foundation in evidence before the court, or any affidavits or sworn information or petition, the report relating only to the decree of December 18, 1907.

As a result of the foregoing, it must follow either—

(a.) That the rule to show cause was without any foundation whatever to justify its issuance, and therefore the whole proceeding is void, or

(b.) That assuming that the acts complained of are fairly the subject of contempt proceeding, they are to be regarded as barred, because based upon an order expiring 3 years and 3 months before their institution, and being controlled by the statute of limitations, as we shall hereafter show.

I.

4. THE MAJORITY OF THE COURT OF APPEALS ERRED IN SUSTAINING THE COURT BELOW IN REFUSING TO DISMISS THESE PROCEEDINGS, NO PROPER REPLICATION HAVING BEEN FILED TO THE PLEA OF THE STATUTE OF LIMITATIONS.

5. THE MAJORITY OF THE COURT OF APPEALS ERRED IN SUSTAINING THE COURT BELOW IN OVERRULING THE PLEA OF THE STATUTE OF LIMITATIONS HEREIN.

9. THE MAJORITY OF THE COURT OF APPEALS ERRED IN NOT FINDING THAT ANY CHARGES AGAINST ANY RESPONDENT WERE BARRED BY THE STATUTE OF LIMITATIONS.

These specifications of error, above quoted, all have relation to the defense of the statute of limitations, a defense which was at every moment of the proceedings insisted upon and brought to the attention of the court in every possible way, down to the moment of its decision. It was overruled by the opinion of the court (Record, p. 41) and disre-

garded and overruled whenever presented at a later period in the case, and overruled by a majority of the Court of Appeals. Nevertheless, we submit in all confidence that the defense was absolutely good, and that it should have prevailed.

Statutory Provisions.

There are two statutory provisions of importance in considering this matter, the first being section 1044 of the Revised Statutes, providing a period of limitation applicable in this case, which reads as follows:

"No person shall be prosecuted, tried or punished for any offense, not capital, except as provided in section one thousand and forty-six, unless the indictment is found or the information is instituted within three years next after such offense shall have been committed. But this act shall not have effect to authorize the prosecution, trial or punishment of any offense, barred by the provisions of existing laws."

The second provision is section 725 of the Revised Statutes, relating to contempts, reading as follows:

"The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine, or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree or command of the said courts."

What is the Essence of Contempt?

Impressed, perhaps, by the names of great judges in the past, authors and, in some instances, courts have found it easier to accept without critical consideration what has been said in the books with regard to contempt than to make an independent examination. As a result of this, we find a confusion, not even recognized by those indulging in it, in the books and courts with relation to the nature and character of contempts. It is this confusion which accounts for contempt of court being called in a haphazard way "penal," "quasi criminal," "criminal in its nature," etc. To our minds contempt of court may present features more widely different, by way of illustration, than assault and fraud.

The simplest form of so-called contempt of court is where one disturbs the judge in the court-room, threatens or assaults a witness, attacks a jurymen, etc. Here we have an obstruction to the course of justice which we may class as purely criminal and which is denominated direct contempt. The real cause for punishment is not want of respect for the judicial officer, who may not at all have been in the mind of the offender, but the fact that the thing done is an obstruction to justice and, therefore, a crime. It may be punished by the ordinary course of the criminal law, and this was the only way in which it was punished originally. According to later practice, it may be punished by very summary proceedings if occurring within the sight of the justice, or by a less summary method through rule to show cause, etc., if not within his personal knowledge and sight.

We have next a failure or refusal on the part of a defendant to meet the requirements of the court's decree. This is illustrated by the case where the defendant has been ordered to execute a deed or pay alimony and fails or refuses to do so. In this case the action of contempt is in the nature of an execution and exactly analogous to imprisonment for debt after judgment at law, where the defendant was regarded as contumacious but able to relieve himself of the

consequence of his contumacy by paying the money adjudged to be due by him. This process of contempt is as purely civil therefore as an ordinary *fi. fa.*, and contains no element of criminality.

Those who actively disobey the injunction of the court are held to be in constructive or indirect contempt, and are subject to punishment at common law as committing a crime, and always have been so subject. They are not in point of fact so subject because they have been disrespectful to the court, but because, as in the first instance, they are obstructing the course of justice and in this respect violating the orderly course of government. This variety of contempt originally was the subject of trial by jury, and in later times was seized upon by the court of Star Chamber as coming within its jurisdiction, being contemptuous of the King, because contrary to commands under his seal, but all the time being a crime, as is shown in this brief. It is only within the past hundred years that courts of chancery by summary proceeding have undertaken to punish those who came under this third classification. Their criminal correction by proceedings in chancery is not necessary to the ends of justice, because an indictment would equally well serve the purpose, and in many instances might be more expeditious. Not being necessary and being of only recent creation, the power to adjudge such violators of the law to be in contempt of court is not inherent in a court of chancery.

We are tempted to quote at this point the language used by Mr. Storrs, a prosecutor in the trial of Judge Peck, for abuse of the powers of contempt (Peck's Trial, page 402). Referring to extensions of powers of contempt, he says:

"It is not to be made an offense on arguments drawn from necessity, unless the law has made it. Power was ever silently stealing its way along that path. It was first necessary—then inherent—then implied—then expedient—then adopted—then demonstrated as precedent, as well as principle,—and finally established, defended, and learnedly and eloquently vindicated."

It will be of assistance in this discussion to consider further from another point of view exactly what is contempt. In the old English law we find that contempt was construed to be a disrespect, not of the courts primarily, but to the King, as, for instance, by the creation of disturbances in the King's house at Westminster, or by insulting actions or language toward the writs bearing upon them the impress of the King's seal (*contemptum brevirum*). This idea of disrespect to the King has been through the centuries transferred into an idea of disrespect to the courts as agencies of the royal authority. Yet, if we consider the thing, contempt is nothing else than a very commonplace criminal offense which, when levelled against the judgments of the courts, has been treated in a summary manner by the courts, but which when levied against the orders of any other branch of government is not made the subject of summary proceedings.

The power of proceeding summarily in indirect contempt is one which, being entirely the creation of judges, may be abolished by the power which created it, and matters of this sort may be treated as other cases of wrongdoing—that is, referred to the ordinary Government prosecutor for his appropriate action.

Is Contempt of Court a Crime and Were Proceedings in This Case Criminal?

The principal questions which arise upon the interpretation of the statutory provisions are

1. Whether contempt of court is a crime within their meaning, and
2. Whether contempt of court is such an offense as is indictable or the subject of a criminal information, and, in point of fact, whether in point of form or not, are the proceedings had in this case criminal?

(It was the contention of the lower courts that contempt of court, spoken of often as being "criminal in its nature" or "quasi-criminal" or "penal," is not in fact criminal.)

We may properly begin the discussion of these propositions by examining into the history of the action of contempt from its earliest beginnings, and in doing this work, we shall find ourselves materially aided by the careful review of the earliest year books made by Mr. Solly Flood in the Transactions of the Royal Historical Society, new series, volume 3, 1886, and by Mr. Charles Fox in an article in the *Law Quarterly Review* for 1908, under the title of *King vs. Almon*. We subjoin an extract* from the

* "See the history of the writ of habeas corpus by the present writer (Solly Flood), title 'Contempt,' in which are transcripts or extracts of records of all the known cases of contempt, except those mentioned in the year books, which came before the court of King's bench from the time of Magna Charta to the death of Henry V. and all the reports of those mentioned in the year books, but not one of which was dealt with otherwise than according to the course of common law, i.e., by action, information, presentment, or indictment. The following schedule contains a brief summary of them.

Roll.	Name of plaintiff.	Name of defendant.	Précis of record.
M. 37, 38 Hen. 111, m. 7.	Rex et W. Bertolf...	Will Kyme.....	Action for inciting a mob of 300 persons to burn plaintiff, because he sued defendant in King's Court, and for beating the jury.
M. 37, 38 Hen. 111, m. 12d.	Rex et Joh. de Faukain.	Will de Insula.....	Action for assault in the presence of judge while sitting in court.
M. 38, 39 Hen. 111, 22d.	Rex	Laurentius.....	Action for contempt and hindering proceedings in court.
P. 21, Ed. 1, par. i, m. 95.	Rex et William de Hereford.	Eustace de Parle and Joh. de Parle.	Information by petition of judge to Parliament against defendants for insulting him in court.
P. 22, Ed. 1, m. 39.	Joh. de Molendin and others, jurors in action of Gommage v. Pestour.	Hug and Portam.....	Action by the jury in a cause for abusing them in open court; a jury to try the issue impanelled instant.
T. 30, Ed. 1, m. 9d.	Rex et Simon de Henham.	Egid de Argentum..	Action for assaulting the plaintiff in open court.

work of the first named, showing that without exception from the time of Magna Charta to the death of Henry V every single case of contempt was dealt with alone by action, information, presentment, or indictment, and that in not one of them was it thought by the courts necessary that there should be a summary proceeding, without a trial by jury. Let us call attention to some of the most striking cases.

Roll.	Name of plaintiff.	Name of defendant.	Précis of record.
M. 33, 34, Ed. I, m. 75.	Roger de Hengham.	Will de Brews.....	Information by Chief Justice for abusing him in open court, while sitting to try an action.
T. II, Ed. II, m. 48.	Will de Thorp.....	Thomas Mackwell et Joh. frater ejus.	Action by one of a jury who had been sworn for assaulting him on his way to court; tried by a jury of bystanders in the court.
T. 13, Ed. II, m. 14.	Rex et Joh. de Cherleton.	Henr. de la Potte....	Action by Mayor of the Staple for abusing him in open court at Westminster; tried by a jury impanelled instant in Westminster Hall.
M. 17, Ed. II, m. 16d.	Will de Bradeschagh, miles.	Henr. de Gillebrand.	Action for violent assault and preventing the holding court.
M. 17, Ed. II, m. 16d.	Jordamus de Kenyon.	Will de Bradeschagh, mil.	Action for violent assault by an appellee upon the appellant on his way to court.
M. 17, Ed. II, m. 63.	Rex et.....	Will de Botesford...	Action for abusing in court a party to a suit.
M. 17, Ed. II, m. 69.	Joh. C. Norreys.....	Ad. de Bykerstaffe..	Action by one of a jury in an action for accusing him in open court of giving a false verdict.
M. 5, Ed. III, m. 128.	Joh. de Graunt sete.	Regen (in error).....	Conviction by Superior Court for contempt in open court reversed by a writ of error, because offence not tried by a jury.
M. 6, Ed. III, m. 30d.	Rex et Joh. de Rokeley.	Ad. de Everyngham de Rokeley.	Action for contempt (<i>de placito contemptum</i>) in assaulting plaintiff in open court.
P. 10, Ed. III, m. 29.	H. Gaygold.....	W. de Botesford.....	Like action for assault on plaintiff in open court.
P. 10, Ed. III, Rex, m. 13d.	Jurators, etc.....	Gilb. Twyse.....	Action by a jury for abusing them in open court

We find among others that when the jury was abused in open court, a jury was impannelled to try the case. We find an information by the Chief Justice for abusing him in open court. We find even a conviction of a superior court for a contempt in open court, reversed by writ of error because the offense was not tried by jury. We find an indictment for an assault in open court, and an indictment for

Roll.	Name of plaintiff.	Name of defendant.	Præcis of record.
H. 13, Ed. III, m. 116.	Joh. de Sandham....	T. Holebrook.....	Process before Parliement (<i>coram Regem Parliamento</i>) for tumult in court.
T. 19, Ed. III, m. 77.	Rex et Th. de Whitesley.	W. de Dalyngham..	Action for violent assault in court.
H. 22, Ed. III, m. 103.	Rex.....	Regr de Bondon.....	Presentment by jury for contempt and assault on one of themselves in court, removed by writ of certiorari; defendant pleaded not guilty, but tried by a jury and convicted.
P. 26, Ed. III, m. 60.	Rex et Th. Hubert..	Joh. de Wodehouse et Joh. servejus.	Action by one of a jury for violent assault in open court; verdict, damages x. lib., of which xixs awarded to King.
M. 30, Ed. III, m. 113.	Rex et Sim. de Regworth.	Ric. de Shaleford ..	Action for violent assault on the Attorney-General in open court.
T. 1, Hen. V, Rex, m. 15.	Rex.....	John Shaw.....	Bill for attempting to rescue a prisoner from the interior bar of the court and abusing the marshal. Jury of officers of the court ordered and challenged. Challenge allowed. Fresh jury impannelled. Defendant found guilty of part contempt, acquitted of remainder.
T. 9, Hen. V, Rex, m. 7.	Rex.....	Richard Cheddre....	Pre-sentment by jury for violent abuse of them while considering their verdict; removed by certiorari. Defendant arraigned, pleaded guilty, and prayed to be admitted to make an end with the King.

N. B.—The said Richard Cheddre afterwards offered the council, *sponte et non coactus*, voluntarily to pay 300 marks, in three installments, which sum was accepted by the council, and assigned by them to the Duke of Bedford, the King's brother, in part payment of his wages. The judges were then ordered, by writ of privy seal, to record the amount of all forfeitures on payment. See Acts of Council, ii 298, 303, and 321.

striking in Westminster Hall a juror who had given a verdict against the defendant.

It seems, therefore, that for hundreds of years summary proceedings were unknown even for contempts in open court, which offense was so far criminal as to be prosecuted by all criminal methods, and a trial by jury absolutely requisite.

Taking up the article referred to by Mr. Fox, we discover that he denies with weight of authority the opinion prepared but, as it happened, never delivered by Justice Wilmot, in which that justice maintained

"That the power which the courts in Westminster Hall have of vindicating their own authority is coeval with their first foundation and institution. It is a

To the foregoing are to be added as reported.

Year book.	Name of plaintiff.	Name of defendant.	Précis of record.
M. 22, Ed. III, f. 29.	Rex.....	Anon Chiv. of Anon Esq.	Indicted for an assault in open court in the presence of Thorpe, Justice.
27 Ed. III, Lib. Ass. pl. 49.	Rex et anon (a priest).	Anon	Action for trespass in the presence of the King (<i>coram Rege</i> and his Justices) i. e., in the court of King's Bench.
30 Ed. III, Lib. Ass. pl. 14.	Rex et anon.....	Anon	Action for assault on person coming to court to prosecute an action.
33 Ed. III, Lib. Ass. pl. 1.	Rex et Ad. Brabson et Em. his wife.	Ex. R. W.....	Action for assault on female plaintiff coming to court to prosecute an assize of novel Disseisin.
42 Ed. III, Lib. Ass. pl. 18.	Rex et Sibilla, widow of John Dring.	Patrick de Sandal..	Action for assault in Westminster on a widow while prosecuting an appeal against defendant for the death of her husband; tried by a jury of stall-keepers in Westminster Hall, impanelled in-stanter.
42 Ed. III, f. 2, pl. 17.	Rex	Anon	Indicted for striking in Westminster Hall a juror who had given a verdict against defendant.

necessary incident to every court of justice, whether of record or not, to fine and imprison for a contempt of the court, acted in the face of it, and the issuance of judgments by the Supreme Court of Justice in Westminster Hall for contempts out of court, stands upon the same immemorial usage as supports the whole fabric of the common law; which is as much the *lex terræ*, and within the exception of Magna Charta as the issuing of any other like process whatever."

In this connection it is to be borne in mind that the opinion of Mr. Justice Wilmot sustains the issuance of attachments for libels committed against judges concerning their conduct as to cases they have decided, a doctrine attempted to be vindicated by Mr. Justice Peck in this country in the early part of the last century, and which nearly cost him his judicial seat, and brought about the statutory limitation upon the exercise of contempt powers by Federal judges.

Mr. Fox mentions (page 197) as sustaining the doctrine before referred to, illustrated by Mr. Solly Flood, that in contempt proceedings the defendant was entitled to trial by jury, a number of cases, one in the time of 21st Edw. I, where an attachment was brought on the King's behalf against one W., who was charged with trampling a prohibition under his feet, and upon his denying the contempt, the question being tried by jury, also another case in 3 Edw. II, where a man receiving a writ of prohibition and throwing it on the ground was found in contempt by a jury.

Coming further down, we will mention the case of Thomas Wilbraham, who petitioned against the justice of the King's Bench "that they had not done according to law and reason," for which he was indicted, convicted, fined, and ransomed in the King's Bench. And a further case is of one Humney, who having complained to King Edward III that Sir William Scott, Chief Justice, had awarded an assize contrary to law, the King sent it to the judges; whereupon he was imprisoned, judged, fined, and ransomed. The last two

cases were cited by Sir Edward Coke (Howell's State Trials, volume 2, p. 1074), case of Waynham.

In the case of Nicholas Fuller (12 Reports, 41; year 1609) we find the following:

"These points were resolved upon conference had with all the justices and barons of the exchequer.

* * *

"4. It was resolved that if a counsellor at law in his argument, shall scandal the King or his government, temporal or ecclesiastical, this is a misdemeanor, and contempt to the court; for this he is to be indicted, fined and imprisoned, and not in court Christian."

In the case of Richard Radley (7 Howell's State Trials, 702), this being a case of scandal against Chief Justice Scroggs, because of his judgment in a case, the defendant was ordered proceeded against by information and was convicted and fined.

We find in a note to Dyer's Reports, page 188*b*, the following:

"Richardson, Chief Justice of C. B., at the assize of Salisbury, in the summer of 1611, was assaulted by a prisoner condemned there for felony, who, after his condemnation, threw a brickbat at the said judge, which narrowly missed; and for this an indictment was immediately drawn by Noy against the prisoner, and his right hand cut off and fixed to the gibbet, upon which he was himself immediately hanged in the presence of the court."

In the case to which this is a note Davis struck a witness and threatened him if he gave evidence, this in Westminster Hall, all the King's courts sitting, and he was indicted and convicted.

In Harrison's case, Cro. Car., 503, the defendant was indicted for having, when the court was sitting, accused Judge Hutton of high treason. He was convicted by jury, and, as

part of his penalty, compelled to acknowledge his wrong to all the courts sitting in Westminster.

It is a matter of note that Mr. Fox does not find apparently that a court of chancery ever exercised, in its early history, power to proceed summarily in cases of contempt, but that, whenever its orders had been violated, regular criminal proceedings were had against the offender in the court of Star Chamber until that court was abolished in 1641, and thereafter, by the provisions of the act abolishing it, the powers exercised by it, so far as they were legally exercisable, were vested in the remaining courts.

The limitations upon the right of the court of chancery to undertake to treat punitively contempts of its orders is further discussed in an article in the *Harvard Law Review* of January, 1908, by Prof. J. H. Beale, Jr., from which we extract the following:

(Page 169:)

"This difference in nature between the contempt of the King's seal on a writ and active contempt of the court appears also in the method by which the court deals with the contempt. Active contempt of the court, like similar contempt of the King, is a crime, and indeed may be indicted and punished as a misdemeanor. It is usually dealt with summarily by the court, which causes the immediate arrest of the offender and sentences him to a fine or imprisonment as a punishment for his wrong-doing. Quite otherwise is the action of the court where its injunction or other order or decree is violated by the person to whom it is addressed. In such case the violation is called to the attention of the court by the injured party, and if the violation is proved the wrong-doer is committed to prison to remain until he purges himself of his contempt by doing the right or undoing the wrong. As early as the time of Richard III it was said that the chancellor of England compels a party against whom an order is issued by imprisonment; and a little later it was said in the chancery that 'a decree does not bind the right, but only binds the person to obedience, so that if the party will not obey, then the chancellor may commit him to prison

till he obey, and that is all the chancellor can do.' This imprisonment was by no means a punishment, but was merely to secure obedience to the writ of the King. Down to within a century it was very doubtful if the chancellor could under any circumstances inflict punishment for disobedience of a decree. * * *

"It thus appears that imprisonment for contempt of the chancellor's decree, or rather for contempt of the King's writ issued in execution of such decree, was not punitive but coercive; and that anything in the nature of a sentence to a definite punishment, like a fine or an imprisonment for a term, was entirely foreign to the process."

It would seem clear historically, therefore, that direct or indirect contempt is a criminal offense, first dealt with by jury, but its nature in no sense changed because of the fact that in later years courts undertook to deal with it by summary process. That it is still in England regarded as criminal is evidenced from the language used *In re Pollard* (5 Moore, P. C. (N. S.), 411; L. R., 2, P. C., 106), decided in 1868, wherein the court says:

"Their lordships do agree only to report to your majesty that in their judgment no person should be punished for contempt of court, which is a criminal offense, unless the specific offense against him be distinctly stated, and an opportunity of answering it given to him, and that in the present case their lordships are not satisfied that a distinct charge of the offense was stated, with an offer to hear the answer thereto before sentence was passed."

In this case the offense was an alleged contempt committed in open court.

In the English work of Oswald on Contempt, third edition, page 6, the writer declares broadly that—

"contempt of court by interfering with judges or the course of justice is a misdemeanor at common law."

In Lord Halsbury's work upon the "Laws of England," under the title "Contempt" in volume 7, page 280, summarizing the decisions of the court up to date and including many of the old cases upon which our present rules are founded, it is said:

"604. Criminal contempt is a misdemeanor punishable by fine or imprisonment, or by order to give security for good behavior. The superior courts have an inherent jurisdiction to punish criminal contempt by the summary process of attachment or committal in cases where indictment or information is not calculated to serve the ends of justice. The power to attach and commit, being arbitrary and unlimited, is to be exercised with the greatest caution, and as the application of this remedy invokes the withdrawal of the offense from the cognizance of a jury, it is only to be resorted to where the administration of justice would be hampered by the delay involved in pursuing the ordinary criminal process."

The same work, under the title "Criminal Law and Procedure," contains the following:

"998. Contempt of court is a misdemeanor at common law and punishable by fine and imprisonment without hard labor. Contempt of a court of record is also punishable summarily by committal or attachment by that court, and this is the course usually taken. But in all cases the remedy by indictment remains."

The language of American courts is substantially similar.

In *Ex parte Kearney* (7 Wheaton, 38, 43), a case of commitment for a direct contempt in refusing to answer questions in open court, the Supreme Court of the United States says:

"When a court commits a party for contempt, their adjudication is a conviction, and their commitment in consequence is execution."

In Williamson's case (26 Pa. State, 18), for making a false return on *habeas corpus*, it is said:

"It must be remembered that contempt of court is a specific criminal offense. It is punished sometimes by indictment and sometimes in a summary proceeding, as it was in this case. In either mode of trial, the adjudication against the offender is a conviction, and the commitment in consequence is execution."

In re Schull (221 Mo., 623; 133 American State Reports, 496), contempt for refusal to answer questions as a witness, it is said contempt of court is a specific criminal offense, and a fine imposed is a judgment in a criminal case. The adjudication is a conviction, and the commitment in consequence thereof is execution.

In *New Orleans vs. N. Y. Mail Steamship Company* (20 Wallace, 387) the Supreme Court says:

"Contempt of court is a specific criminal offense. The imposition of a fine was a judgment in a criminal case. This court can take cognizance of a criminal case only upon a certificate of a division in opinion."

In *Castner vs. Pocahontas Collieries Co.* (117 Fed., 184), where a regular criminal arrest for violating the statute had taken place, among numerous other authorities was cited with approval the language of Judge Blatchford in *Fischer vs. Hayes*, 6 Fed., 68, as follows:

"It is well settled that contempt of court is a specific criminal offense."

In re Ellerbe, 13 Fed., 530, where arrest for refusal to obey subpoena was sought in another district, expresses the following:

"A refusal to obey the process of a court of the United States is an attempt to obstruct the administration of justice, and is plainly an offense against the

Federal Government. A proceeding in contempt in a Federal court is a criminal case to be prosecuted in the name of the United States." * * *

"It has frequently been held to be an offense against the United States, within the terms of the provision of the Constitution which authorizes the President to pardon such offenders," citing 3 Op. Att'y's General, 622; 4 *Id.*, 317; 4 *Id.*, 458.

In *Anargyros vs. Anargyros & Company* (191 Federal, 208), a proceeding to punish for contempt was held to be a criminal action. In the case of *Flathers vs. State* (125 Pacific, 902) it was held that a person imprisoned as punishment for a criminal contempt, properly so called, is imprisoned in execution under sentence for a crime.

In the case of *U. S. vs. Jacobi*, Federal Cases 15,460, wherein occurs a thorough review of this particular subject, the court said:

"I hold that section 17 (now section 725, U. S. R. S.) makes contempt of court a crime against the United States. Now that it is within section 33 (section 1014, U. S. R. S.) a crime for which the party may be arrested and imprisoned, or bailed, I do not doubt."

In *Ex parte Mullee* (Fed. Cases No. 9911) it was said by Justice Blatchford:

"A contempt of court is an offense against the United States. In the present case there is a judgment judicially declaring the contempt and offense."

In the case of *Bullock E. & M. Co. vs. Westinghouse E. & M. Co.*, 129 Fed., 105, the court had occasion to discuss the character of contempt as a crime, and Mr. Justice Lurton, speaking for it, said:

"The willful violation of an injunction by a party to the cause is a contempt of court constituting a specific criminal offense" (many citations following). * * *

"Is it reviewable by a writ of error? A contempt proceeding is classified as a misdemeanor, and not as a felony. *In re Acker* (C. C.), 66 Fed., 291. Misdemeanors are reviewable by this court upon writ of error by virtue of the broad appellate powers conferred by the act of March 3, 1891, c. 517, 26 Stat., 826 (U. S. Comp. St., 1901, p. 547), establishing circuit courts of appeal and defining and regulating the appellate powers of United States courts. If, therefore, the imposition of the fine complained of 'was a judgment in a criminal case' as it is defined to be in *New Orleans vs. Steamship Co.*, 20 Wall., 387, 392; 22 L. Ed., 354, it was a judgment in a misdemeanor case; for contempts are universally classified as misdemeanors, and not felonies. *In re Acker* (C. C.), 66 Fed., 291. If a judgment in a misdemeanor case, it is reviewable upon writ of error by this court. This conclusion was reached by the Circuit Court of Appeals for the Second Circuit in *Gould vs. Sessions*, 67 Fed., 163; 14 C. C. A., 366."

In the *Acker* case above referred to the Federal court held that contempt of court being a misdemeanor a United States marshal might arrest the offender therefor when caught in the act.

In *Lester vs. People*, 150 Ill., 424, the court said that a criminal contempt was—

"a distinct case, criminal in its nature and may properly be docketed and carried on as such, and the judgment entered therein *will exhaust the power of the court to further punish for the same acts and contempts.*"

The case last cited we also rely upon to maintain the proposition elsewhere discussed in this brief that no criminal contempt as such should be carried on as a suit in equity.

Contempt of Court May be Pardoned by the President as a Crime.

The Attorneys General of the United States have repeatedly held that "contempt of court is an offense against the United States," within the power of the President to pardon (3 Op., 622; 4 Op., 458; 5 Op., 579; 19 Op., 476), basing their conclusion upon repeated court decisions. Among the State authorities treating contempt as subject to the pardoning power are Shoup *vs.* State, 102 Tenn., 9; 73 Am. St. Rep., 851; State *vs.* Sauvinet, 24 La. Ann., 119; 13 Am. Rep., 115; *Ex parte* Stickney, 4 S. & M. (Miss.), 751; State *vs.* Van Orden, 21 La. Ann., 119.

Writ of Error to Supreme Court Not Allowed, as Contempt is Criminal.

As a result of this review, brief as it is, and indefinitely multiplied as it might have been, we are prepared for the case of Pierce *vs.* U. S. (37 Appeals D. C., 582, 589), wherein the appellant had been adjudged guilty of a criminal contempt, and that court said:

"The case against the applicant is what has been denominated a criminal contempt. It was a proceeding at law between the United States and the defendant to vindicate the authority of one of their courts by punishing an action in contempt thereof. It is, therefore, in the nature of a criminal proceeding, and governed by the principles and procedure relating thereto, save in respect to indictment and trial by jury. *Gompers vs. Buck's Stove and Range Company*, 221 U. S., 418; 55 L. Ed., 797."

* * * * *

"We feel that it did arise under a criminal law within the meaning of that term as used in section 250."

That court, in reaching the conclusion it did in the case just cited, was supported by numerous authorities, among

which we may refer to the case of *Hurley vs. Commonwealth* (188 Mass., 443), wherein under a law permitting re-examination by the Superior Court in cases of crimes, the court said:

"A sentence to punishment for a distinctively criminal contempt is a judgment in a criminal case, which may be re-examined upon a writ of error."

It will be noted, however, that in the present case the Court of Appeals has apparently reversed its holding that a criminal contempt amounts to a case under the criminal law.

Method of Trial No Criterion as Determining Whether Criminal Contempt is Crime.

It will be noted that in the opinion of Mr. Justice Wright below it was contended that contempt of court was not a criminal offense, for the reason that in the revision of the penal laws of the United States contempt of court was not specifically mentioned. Certainly there is not anything in the revision of the penal laws affirmatively indicative of the idea that no offense was to be deemed criminal unless named and embraced therein; thus we find in the *Pierce* case that a writ of error was refused on the ground that contempt of court was so far criminal that no writ of error could lie to the Supreme Court of the United States, and it is to be noted that when an application was made to the Supreme Court itself for the granting of a writ of error, that application was refused, the action of the District Court of Appeals being, therefore, in effect, affirmed.

It was further urged in the opinion of Mr. Justice Wright that the offense of contempt of court was not criminal in any constitutional sense, because a trial by jury was not provided for. The 6th Amendment of the Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an im-

partial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

It being recognized that contempts are ordinarily dealt with at the present day summarily by the court, and without the assistance of a jury, the argument of the trial court was then that the case is not criminal because trial by jury is not provided for, and further because the respondent has no absolute right to be confronted with the witnesses against him, or informed of the nature and form of the accusation.

Without for a moment admitting that any of the other elements may be ignored, we have to reply that the right or want of right to trial by jury does not in any degree determine the nature of the offense as to its being civil or criminal, and further that no well considered case, if, indeed, any case, of indirect contempt, such as that before the court, may be found in which the respondent has not had and been secured the benefit of a written (and sworn) accusation against him and the opportunity of confronting the witnesses charging him with the crime.

Let us discuss the question of the presence or absence of a jury as indicating the character of the offense.

We shall respectfully submit that the presence or absence of an incident which may or may not pertain to the procedure upon the trial cannot determine whether the act itself be criminal. To reason otherwise is to invert the orderly progress of events, and is likely to bring about a deceptive result. This we find to be true in the present case.

In the case of *U. S. vs. Jacobi*, Fed. Cases, 15460, it is said.

"The fact that the mode of trial in contempt cases is summary, by attachment, etc., and therefore pe-

culiar or different from trials for most other crimes, is not at all significant of whether contempt is a crime or offense within the meaning of section 33 of the judiciary act."

In *Callan vs. Wilson* (127 U. S., 540) the question presented to the court was that of a right to trial by jury in a case of conspiracy in the District of Columbia, and Mr. Justice Harlan quoted with approval Mr. Justice Story, as saying (Story, Constitution, sec. 791) that the 6th Amendment—

"in declaring that the accused shall enjoy the right to a speedy and public trial by an impartial jury in the State or district wherein the crime shall have been committed (which district shall be previously ascertained by law), and to be informed of the nature and cause of the accusation and to be confronted with the witnesses against him, does but follow out the established course of the common law in all trials for crimes."

After further discussion Mr. Justice Harlan said:

"Without further reference to the authorities and conceding that there is a class of petty or minor offenses not usually embraced in public criminal statutes, and not in the class or grade triable at common law by jury, and which if committed in this District, may under the authority of Congress be tried by the court and without a jury, we are of the opinion that the offense with which the appellant is charged does not belong to that class."

The language just quoted indicates clearly that there is a class of offenses not usually embraced in public criminal statutes.

This is in the line with decisions coming down from our judicial beginnings in this country.

We know that large classes of cases, civil as well as criminal, are today tried without a jury, because so tried at com-

mon law, and that it is usually held that the constitutions, Federal and State, simply preserve jury trials and inaugurate no new system (6 Ency. of Law, p. 974, 2d ed.).

As bearing upon this point, the Chief Justice below, in his dissenting opinion, quotes as follows from the opinion of the Supreme Court of the United States, in the case of *Robertson vs. Baldwin*, 165 U. S., 276, wherein it is said :

"The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guarantees and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. Thus, the freedom of speech and of the press (art. 1) does not permit the publication of libels, blasphemous or indecent articles, or other publications injurious to public morals or private reputation; the right of the people to keep and bear arms (art. 2) is not infringed by laws prohibiting the carrying of concealed weapons; the provision that no person shall be twice put in jeopardy (art. 5) does not prevent a second trial, if upon the first trial the jury failed to agree, or if the verdict was set aside upon the defendant's motion, (*U. S. vs. Ball*, 163 U. S., 662-672); nor does the provision of the same article that no one shall be a witness against himself impair his obligation to testify, if a prosecution against him be barred by the lapse of time, a pardon, or by statutory enactment. *Brown vs. Walker*, 161 U. S., 519, and cases cited. Nor does the provision that an accused person shall be confronted with the witnesses against him prevent the admission of dying declarations, or the deposition of witnesses who have died since the former trial."

We think it is sufficiently apparent from the foregoing that the method of trial, whether with or without a jury, cannot be invoked to determine the character of the act as being criminal or otherwise.

*Right to Be Informed of Accusation and Confront
Witnesses.*

Nor may it be argued, as we believe, with greater success, that the constitutional provision with reference to the right to be informed of the nature and form of the accusation, and to confront witnesses, is of no importance in connection with the case of indirect contempt. It is true that it has been held more than once that a court has a right on a sudden disorder arising in or about the court-room to punish those who are responsible for such conditions, and to do so without the issuance of process, or the calling of witnesses. The only justification even for this action is apparently *ex necessitate rei*, and no court considering it, and no court at all of which we are aware, except it may have been the Court of Star Chamber in its worst days, has ever decided that in indirect contempts the accused was not entitled to be informed of the nature of the accusation against him (and this under oath), and to confront witnesses. We do not overlook the Shipp case, in which, however, by agreement of counsel and for the convenience of witnesses, testimony was taken by an examiner, and other cases in which the right to confront witnesses was not relied upon or brought to the attention of the judges.

The fact is as to direct contempts, unless the court acts immediately and summarily, it loses all jurisdiction over the supposed offender, and cannot proceed without regular charges against him and an opportunity to him to respond. See, for instance, *In re Foote*, 76 Cal., 543.

Good judges have refused to act in direct contempt cases where the utmost promptness was not observed on the part

of those particularly interested in the maintenance of the authority of the court. For instance, in a case reported in 6 Jurist, page 161, an attachment was sought against a man who had assaulted the plaintiff on the steps of the master's office, on adjournment, and was refused by Lord Coleridge, although the motion for the attachment was made but four days after the occurrence, and the justice refused to go into the question as to whether the assault on the master's steps was or was not sufficiently within the court-room itself, saying that—

“Remedy by indictment and by criminal information before the ordinary tribunals are both open to Mr. Wilton, and it therefore seems to me that I ought to decline to grant this rule in the manner in which it is prayed for.”

What Constitutes a Criminal Information?

It was the opinion of the courts below that the statute of limitations relied on by the respondents (sec. 1044, R. S. U. S.) only applied to such offenses as were prosecuted by information or indictment. Considering as we do other phases of this contention elsewhere, we maintain that contempt being a criminal offense, as demonstrated, the proceedings to bring about a conviction had in this case were by way of criminal information, whether so denominated or not.

The etymology of the word assists us. An information *gives the court to know*, and if the matter of which the court is made aware is criminal in its nature etymologically it is a criminal information. More specifically bearing upon the point, we quote the following from *Ex parte Thomas* (10 Mo. Appeals, 24, 25), wherein it is said:

“In the common law an information is ‘a declaration of the charge or offense against any one at the suit of the King.’ Amer. Dig. tit. Information. ‘An information is for the King that which for a common person is called a declaration.’ *Termes de la*

Ley voc diformation. * * * In practice such informations against certain criminal offenses were most usually filed by the Attorney General as the law representative of the Crown. But the courts also were representatives of his majesty, the fountain of justice, and might, therefore, by leave given, empower any other officer or even a private person, to speak in the King's name to the like effect. Thus, whether the information was *ex officio*, requiring no leave from the court, or by private relation, which required a special leave, it was always considered, in theory at least, as an emanation from the sovereign executive authority. * * * Between a presentment of this character and a mere complaint or affidavit tendered by a subject or citizen, speaking for himself only, there is a broad distinction. The one bears an unquestionable guaranty of good faith and sufficient cause in the sleepless care for the commonwealth which the common law always ascribes to the sovereign power. The other conveys a comparative responsibility, and a possibility, at least, of mere recklessness or malice."

If we turn to perhaps the fullest authority on the subject of information, Hawkins' Pleas of the Crown, volume II, we find that —

"Informations are of two kinds, such as are merely at the suit of the King. Secondly, such as are partly at the suit of the King, and partly at the suit of the party."

Among the offenses done as he says "partly to the King," for which an information will lie, are among other things "contempts as departing from the Parliament without the King's license, disobeying his rights, escaping from a legal embarrassment on a prosecution for contempt," and again "abusing the King's commission to the oppression of the subject, making a return of a mandamus of matters known to be false, and in general any other offenses against the public good, or against the first obvious principles of justice and common honesty."

He finds that an information differs from an indictment little more than that one is found from the oaths of twelve men, and the other is not found, but is the allegation of the officer who exhibits it, and whatever certainty is requisite in an indictment is also necessary in an information.

In giving his history of the law of information, he finds that according to the recitals of statutes of 4th and 5th William and Mary, theretofore informations had been exhibited and prosecuted by private persons, and after the parties had appeared, the informers very seldom proceeded further, and they were without remedy for obtaining costs against the informers, and it was therefore enacted that the clerk of the Crown, in the said Court of King's Bench, should not without express order given by the court, in open court, receive such informations, or issue process without recognizance being entered into for the prosecution of the information.

Further discussing the subject, he states that it seems to have been the general practice not to make an order allowing the information to be prosecuted without first issuing a rule upon the person complained of to show cause to the contrary, which rule was never granted but upon motion made in open court, and supported by affidavit which, if true, made the case, because of its enormity, or other circumstances, seem proper for public prosecution, and he proceeds:

"If the person upon whom such rule is made, having been personally served with it, does not, at the date given him for that purpose, give the court good satisfaction by affidavit that there is no reasonable cause for the prosecution, the court generally grants the information, and sometimes upon special circumstances, will grant it against those who cannot be personally served with such rule as if they purposely absent themselves," etc.

From the foregoing it is manifest that informations might have been originated either by private individuals or by an officer of the Crown, but that if filed by private individuals

they had to have the sanction of an oath, and were originally the basis of a rule to show cause, and if the showing was insufficient, a trial resulted. This we understand to be in substance the English practice today.

Applying all of the foregoing to the case at bar, we find, first, the suggestion proceeding from the court that a crime may have been committed; second, the affidavit of the committee appointed by the court to make the preliminary examination charging the commission of that which is a crime, and next the issuance of a rule to show cause. The parallelism appears perfect.

But it will not be overlooked that the statute refers to "offenses," and criminal contempt is certainly an offense, and to "information" and not to "criminal information" as the Court of Appeals insists. We could therefore lay aside everything in the foregoing argument tending to establish the criminal character of indirect contempt, and, limiting ourselves to the proposition that it is certainly an "offense," and in truth prosecuted by an "information" insist upon the sufficiency of the statute as a defense.

Reverting now to the established practice in these cases, we again call attention to the article by Mr. Solly Flood in the Transactions of the Royal Historical Society, in which, referring to the year books, he finds that no case of contempt was dealt with—

"Otherwise than according to the course of common law, *i. e.*, by action, information, presentment or indictment."

So far is a proceeding for indirect contempt recognized as based upon what is in fact an information that we find in the Decennial Digest, title "Contempt," the sub-title "Preliminary Affidavit or Information," the two being treated apparently as equivalent, and in the cases cited under this head we find in *Indiana (Stewart vs. State, 140 Ind., 7; 39 N. E., 508)*, a verified charge must be filed under the statute,

stating the facts constituting the contempt, as in the nature of a complaint, and (*Snyder vs. State*, 52 N. E., 152; 151 Ind., 553), an unverified statement by a judge having personal knowledge of an indirect contempt is insufficient. In Michigan (*In re Wood*, 45 N. W., 113; 82 Mich., 75), a case of indirect contempt, decided on statute and general principles of law, the rule is based upon affidavits, and in Nebraska, under statute (*Herman vs. State*, 74 N. W., 1097; 54 Neb., 626), this is jurisdictional. In California (*Otis vs. Superior Court of Los Angeles County*, 82 Pacific, 815; 148 California, 129), a case of indirect contempt, the affidavit should contain a recital of the acts charged; and again (*Hutton vs. Superior Court*, 81 Pacific, 409; 147 California, 156), the affidavit of facts in an indirect contempt constitutes the complaint and to confer jurisdiction must show a case of contempt on its face. In Kansas (*In re Blush*, 48 Pacific, 147), without affidavit or information on which to base proceedings for constructive contempt, the defendant will be discharged. In Ohio (*Post vs. State*, 7 Ohio Decisions, 257), where the facts are within the personal cognizance of the court through his own senses, better practice requires an information to be filed by a proper representative of the State, and to permit the accused to file an answer. In Massachusetts (*Hurley vs. Commonwealth*, 74 N. E., 677; 188 Mass., 443), complaint filed by an assistant district attorney, signed by him as a public officer, the court said:

"Assuming as we do that a statement of a constructive criminal contempt should be properly verified before action is taken upon it by a court, we are of the opinion that a formal presentation, by a sworn prosecuting officer, is a sufficient verification to justify judicial action."

In Iowa (*Maloney vs. Travise*, 87 Iowa, 306), an information was filed by a private person in proceedings for contempt because of the existence of a liquor nuisance, contrary to injunction.

In Illinois (*People vs. Wilson*, 64 Ill., 195), the Attorney-General filed an information in the Supreme Court of Illinois, concluding with an application for a rule to show cause why the respondent should not be adjudged in contempt, and under this information the respondents were fined. In Indiana (*Worlan vs. State*, 52 Ind., 49) it was held that under the statute no information by prosecuting attorney was necessary, but an affidavit or "information," duly verified by the oath or affirmation of some officer of the court or other responsible person, was sufficient, the official oath meeting the condition.

In *Kansas vs. Henthorn* (46 Kansas, 613), a case of constructive contempt, the court said:

"A careful examination of the authorities satisfies us that in all cases of constructive contempt, whether the process of arrest issues in the first instance, or a rule to show cause is served, a preliminary affidavit or information must be filed in the court before the process can issue. This is necessary to bring the matter to the attention of the court, since the court cannot take judicial notice of an offense committed out of the court and beyond its powers of observation." Followed in *In re Nikell*, 47 Kansas, 734, and 46 Kansas, 618, *Kansas vs. Vincent*.

In *Cartwright's case* (114 Mass., 230) the information was filed by the Attorney-General and the defendant was found guilty of and punished for contempt, the power being held inherent in the court, but the contempt being regarded as an act "tending to obstruct or degrade the administration of justice."

Has the Supreme Court of the District of Columbia Inherent Power to Punish for Contempt?

Many courts of the United States, following the broad language of English decisions, have held that the power to punish for contempt is inherent in all courts, and as to the

general correctness of this proposition, laying aside statutes, and ignoring distinctions and qualifications we discuss elsewhere, we make no question. Whether it be true as to the courts of the District of Columbia involves a very special consideration.

In the absence of statutes we may admit certain power over direct contempt to be inherent, and even in presence of statutes as to courts existing prior to their being adopted it may well be that the power to punish for contempt exists parallel with such powers as the statutes may give, and it may also exist as to constitutional courts. The situation, however, in the Supreme Court of the District of Columbia, as well as in other inferior courts of the United States, we submit, with confidence, is that contempt is purely and absolutely statutory, the argument therefor, briefly stated, being as follows:

The first statute relating to contempts covering this jurisdiction was contained in the judiciary act of 1789 (1 Stat. at L., p. 73). This statutory power was afterwards limited and defined by the act of March 2, 1831. Upon this point we quote from *Ex parte Robinson* (9 Wall., 505) as follows:

"The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power. But the power has been limited and defined by the act of Congress of March 2, 1831. 4 Stat. at L., 487. The act, in terms, applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may, perhaps, be a matter of doubt, but that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction. The act of 1831 is, therefore, to them, the law specifying the case in which summary punishment for contempts may be inflicted. It limits the power of

these courts in this respect to three classes of cases: 1, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; 2, where there has been misbehavior of any officer of the courts in his official transactions; and, 3, where there has been disobedience or resistance by any officer, party, juror, witness or other person, to any lawful writ, process, order, rule, decree or command of the courts. As thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments and processes."

We quote from the language of Judge Spencer, a most eminent lawyer of New York one hundred years ago, and who was one of the managers of the impeachment trial of Judge Peck (Peck's Trial, page 294), the following, as directly applicable to this argument:

"It is an undeniable principle, founded on the soundest reasons, that where a new jurisdiction is created, and a power is conferred, which is required to be exercised under certain qualifications, and under a particular state of facts, it is virtually a negation of the exercise of that same power, in the absence of the required facts."

In reaching this conclusion Judge Spencer relied to a degree upon the case of *Bollman and Swartwout*, 4 Cranch, 93, in which Chief Justice Marshall laid down a rule which we may well quote to sustain our own argument upon this point, and which reads as follows:

"Courts which originate in the common law, possess a jurisdiction, which must be regulated by their common law, until some statute shall change their established principles; *but courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction.*"

When, therefore, the Supreme Court of the District of Columbia was formed it came into existence limited and bound by certain statutory provisions relative to contempts, it being for this purpose a court of the United States and its powers as indicated by the opinion just cited. It might thereafter only punish for the specific contempts embraced in that statute and in the manner therein declared. It was not a court called into existence with general inherent powers, but only upon this point at least certain statutory powers. There cannot exist any power to adjudge contempts apart from the statute we have quoted.

It follows from the foregoing that it is only in so far as the acts of the respondents may be considered contrary to the statute that they are to be adjudged guilty, and as the law declares the crime and affixes the punishment, it is a criminal law, subject to all the qualifications which attach to criminal procedure, except so far as modified by the general rule of the common law, which makes, at the present time, contempts of court when made the subject of summary proceedings triable without a jury, but with the constant limitation that indirect contempts are only to be tried upon what is in fact an information, though denominated often an affidavit.

Summing up the foregoing argument, we find that:

1. There is no essential difference historically, or in practice, in cases of indirect contempt between the information upon which the court acts and the information in any other criminal case.

2. That while higher crimes are triable by a jury, lesser ones, including contempts, have very often been tried upon information, or affidavit, without a jury, right of trial by jury relating only to the grade of the crime and not to the existence of an act as a crime.

3. That the statutes of the United States having defined the crime and fixed the penalty (which may be fine or imprisonment), the offense against the statute is a crime.

4. That even if not criminal, contempt is an offense, and has in this case been prosecuted by an information, and, therefore those charged are entitled to the benefit of the statute of limitations.

Decisions Supporting Plea of Statute of Limitations in Criminal Contempt.

Decisions directly supporting the plea of the statute in the case of contempt, as might readily be concluded from the necessary effect of the preceding argument, as well as from the usually summary nature of proceedings to punish it, have been extremely rare. For if the theory supporting the direct punishment of contempt by summary proceedings be sound, that is, that the court should be able quickly to defend its own process, and defeat without delay any attempt to ignore it, of necessity it must follow that courts act so speedily as to give no opportunity for the passage of so long a period as would be prescribed by statutes of limitation. We are fortunate, however, to be able to call the attention of the court to one or two cases of direct importance. In *Beattie vs. The People* (133 Ill. Appeals, 651) the respondent was charged with having knowingly presented false evidence in a divorce case, and was found guilty. He had moved to dismiss the prosecution as barred by the limitation of 18 months, the statute providing that—

“All prosecutions by indictment or otherwise for misdemeanor, or for any fine or forfeiture under any penal statute, shall be commenced within one year and six months,” etc.

The court held that acts of contempt were criminal offenses within the meaning of this statute, saying:

"It cannot be supposed that the law intended relief and immunity after the lapse of a year and six months for all misdemeanors prohibited by a statute while offenses of the same class, recognized by common law only, are exposed to prosecution at any time during the life of the offender."

The court further said:

"We deny no part of the assertion (as to necessity of existence of the summary power of the court in cases of contempt) when we say that the power to punish for contempt, without limit as to time, is not necessary to preserve the dignity of the court or to enable it to enforce its process, or to attain the ends of its creation."

In arriving at this conclusion the court rested itself in part upon the case of *People vs. Neill* (74 Ill., 68), a case of contempt based on a private affidavit, wherein it was held that—

"A prosecution in behalf of the people and the proceedings for a contempt is in the nature of a criminal proceeding. *Stewart vs. The People* (3 Scam., 395). The people are not allowed an appeal or writ of error in a criminal case."

Although the statutes in Kentucky are somewhat different from those of Illinois, the Supreme Court of Kentucky, in the case of *Gordon vs. Commonwealth* (133 S. W., 206; 141 Ky., 461), adopted the same reasoning and reached a like conclusion as the appellate court in *Beattie vs. People*.

Want of Proper Replication to the Plea of the Statute of Limitations.

It will be noted that no excuse was given in the committee's report for allowing the time prescribed by the statute of limitations to run without the commencement of proceedings, and that when the plea of the statute was raised by the

respondents, no replication was filed excusing the delay, or explaining why the statute had not run. Either the explanation should have been given in the committee's report, or a proper replication filed. In support of this view we have to cite, in the first place, Clark's Criminal Procedure, page 240, wherein it is said, fortified by an abundance of citations, that—

"It seems to be established by the weight of authority that, where the time for the prosecution is limited by statute, the time averred in the indictment should appear to be within the limit, or else the facts necessary to take the case out of the operation of the statute should be alleged, otherwise the indictment shows on its face that the prosecution is barred."

The language of the Encyclopedia of Pleading and Practice, volume 13, page 234, title "Limitations," is as follows (citing numerous authorities):

"It is not necessary for the plaintiff in an action at law to aver in the declaration or complaint that his cause of action is not barred by the statute of limitations, this being a matter to be pleaded by the defendant, the correct practice being to aver these matters by way of replication to the plea."

The same volume, on page 238, indicates the necessity of a proper replication as follows:

"When the plaintiff in an action at law desires to avoid the plea of the statute of limitations or bring his case within any of the exceptions, the general rule is that he must by replication aver the facts and grounds of avoidance."

Without quoting at large the many authorities sustaining the general positions herein indicated, we cite *Thompson vs. State* (54 Miss., 744), as containing language particularly in point.

"If the accused pleads the statute specially, the representatives of the State, by a replication, will plead the exceptional facts which deprive the defendant of its protection, or if the defendant under the plea of not guilty, invokes the protection of the statute by proof, and by instructions asked, the district attorney will in the same manner claim the benefit of the exception."

In *Davis vs. Boyett* (Georgia), 66 L. R. A., 258, defendant was allowed to avail himself of defense of the statute at trial term by motion to dismiss, when it appeared from allegations of the petition that the cause of action was barred by the statute, no fact sufficient to extend bar of statute being pleaded.

In the case of *Attrill vs. Huntington* (in Equity), 70 Md., 199, the court held liability barred by Maryland statute of limitations, and that this defense properly arose under the demurrer filed in this cause, relying on *Belt vs. Bowie*, 65 Md., 355.

In *Wood vs. Carpenter*, 101 U. S., 135, where suit at law was brought, statute of limitations pleaded and replication filed to take case out of statute, which was demurred to and case dismissed, the Supreme Court affirmed the judgment.

In indictments where circumstances have intervened to stop the running of the statute of limitations better practice is to allege true date of commission of offense, and set forth facts which avoid the statute (*State vs. Myers*, 68 Md., 266). See also *State vs. Bilbo*, 19 La. Ann., 76; *State vs. Pierce*, 19 L. R. A., 90; *People vs. Miller*, 12 Cal., 291.

In the local case of *Clark vs. Mayfield* (3 Cranch, 353; Federal Cases No. 2858), it was held that on plea of the statute of limitations, plaintiff cannot avail himself of the exception in favor of merchants' accounts, without stating it in his replication. It is not admissible in evidence upon the general replication to the plea.

If, therefore, we are right in our contention that the

statute of limitations is an available plea in cases in indirect contempt, then it must follow that the court erred vitally in overruling the plea of the statute, and refusing to dismiss the proceedings, based upon the want of such replication, and also in refusing to find that the charges against the respondents were barred by the statute of limitations.

As to What Charges the Plea of the Statute Was Available.

It is said by the Supreme Court of the District as to the question of the statute of limitations, that specifications 10 to 16, inclusive, of the charges against respondent Gompers definitely named dates within three years of the filing of the statute, and that therefore as to these seven specifications (Record, page 42)—

"the statute could have no application, even were it conceded to apply to contempts."

This is the language of the court although the pleas addressed themselves to the several acts charged separately.

The answer to this proposition is several.

1. To begin with, a single judgment of conviction is had in this case as to each of the three respondents, and if by reason of the statute Gompers was guiltless as to any one charge, the judgment against him must fail under the decision of the Supreme Court of the United States in *Gompers vs. Buck's Stove and Range Company*, because, there having been no line of distinction drawn between the punishment for the several charges, it will be assumed that the measure of punishment has been determined by his having been found guilty of certain charges of which he could not have been guilty, the plea being good.

2. The respondent Mitchell is only found guilty of an act occurring more than three years before the filing of the committee's report, to wit, in January, 1908.

3. The respondent Morrison is only charged within three years, under paragraph 4 of the committee's report (Record, page 177), although found guilty of acts within and without said period, and for the reason indicated under paragraph 1, his conviction is invalid.

4. As we have shown in the prior part of our argument, none of the defendants is to be held liable for anything done by him except in violation of the order of December 18, 1907, and inasmuch as this order terminated by its own terms March 23, 1908, it is impossible that after that date any respondent should be charged with a violation thereof. Inasmuch as the report of the committee was not filed until June 26, 1911, three years and three months had gone by during which the original order was entirely dead, and therefore as to any of the acts which were committed after March 23, 1908, even although within one day of the filing of the committee's report, the plea of the statute must be regarded as effective, and the constant objections raised throughout the proceedings by the respondents, based upon this theory of the case, should have been sustained, instead of having been overruled.

Résumé as to Plea of Statute of Limitations.

Summing up the argument on this point, we have to say—

1. From its beginnings contempt of court has been a criminal offense, for many years triable only by jury.

2. English and American courts unite at this day in regarding it as a crime, although usually tried by the court in a summary manner.

3. Courts have granted, or refused, as the case might have been, writs of error, because the offense was criminal.

4. Presidents have pardoned those convicted of criminal contempt as having been guilty of an offense against the United States.

5. The want of a trial by jury does not, because of the constitutional requirement, affect the character of contempt of court as a crime.

6. In indirect contempt the accused has a right to be informed of the nature of the charges against him, which must be put under oath, and to confront witnesses.

7. The prosecution in this case was in fact a prosecution under a criminal information historically and otherwise, and had under the statute, the Supreme Court of the District of Columbia having no power to punish outside of the statute, and even if only an "information," being for an "offense," the statute of limitations in this case bars punishment.

8. Courts have repeatedly decided the direct proposition that the criminal statute of limitations could be invoked to bar prosecutions for the offense of contempt of court.

9. The plea of the statute being good, and no sufficient replication having been filed, the cause should have been dismissed, and, the same point being insisted upon at all stages of the proceedings, if the cause were not dismissed, the accused should have been acquitted.

II.

6. THE MAJORITY OF THE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS ANY EVIDENCE TENDING TO HOLD ANY OF THE RESPONDENTS GUILTY OF THE CHARGES AGAINST THEM OR ANY OF THEM.

8. THE COURT OF APPEALS ERRED IN FINDING THAT ANY UNLAWFUL BOYCOTT EXISTED, OR THAT ANY ACT IN FURTHERANCE OF A BOYCOTT WAS INDULGED IN BY ANY RESPONDENT AFTER DECEMBER 23, 1907.

10. THE MAJORITY OF THE COURT OF APPEALS ERRED IN FINDING THE RESPONDENTS GUILTY OF THE CHARGES AGAINST THEM.

It is, we respectfully submit, impossible to read the opinion of the trial court without coming to the conclusion that what the court had in mind was not so much the supposed contempt of court embodied in the charges, as what the court considered a want of respect for judicial authority, and that it was this latter, rather than the first, for which punishment was meted out. If this view be correct, and in point of fact the respondents had inflicted upon them severe sentences for offenses not charged in the committee's report, then the conclusions of the court were based upon false premises and its sentences correspondingly not supported by the findings as indicated by the opinion. In sustaining the findings of guilt the Court of Appeals seems to have fallen into the same error as we shall endeavor to show. Let us make this point clear. Toward the conclusion of the opinion, the trial court found as follows:

"The evidence shows for these respondents an assiduous and persistent effort to undermine the supremacy of law by undertaking insidiously to destroy the confidence of the people in the integrity of the tribunals which maintain it; this by inoculating the minds of their following and the people with a virtue of mischievous falsehood and misrepresentation concerning the courts and judges, seeking and hopeful that thus the support of the people might be withdrawn from these tribunals, and by this means their power undone, their judgments rendered valueless and forceless.

"To the startling but none the less deliberate end of erecting themselves into an autocracy from whose mischievous edicts no law could give redress and the land know no appeal" (Record, pp. 128, 129).

That the major thesis sustained in the court's argument led the court to this conclusion and that the real charges made by the committee were entirely minor in the mind of the court is evident from a careful review of the opinion. Without undertaking to call attention to everything sustaining this view, for in fact to do so we would be compelled to go through the opinion line by line, we invite the attention of this court to some citations having reference only to the conclusion we have above quoted and having no reference whatever, except in the extremest sense, by way of argument, to the specific charges against the respondents. We quote as follows:

"In his annual report to the convention of the American Federation of Labor of 1905, Gompers, president, said in part:

"In view of the continued use or abuse of the issuance of the writ of injunction in labor disputes there can be no question but that it is our bounden duty to impress upon Congress the necessity of enacting a bill which shall relieve our fellow-workers from the injustice which so many are compelled to endure. * * * There is no act which is a lawful act that a workman may do from which he should be enjoined from doing by an injunction of a court;

there is not an act, if it be an unlawful act, which a court by its injunction may enjoin for which there is not already a law with its provided penalty.

"Viewed from any point, the issuance of injunctions, as we have witnessed them in our own country, cannot be defended in either law or morals. * * *

"* * * The question of the courts' abuse of the injunction powers is in a most unsatisfactory condition, and will not be settled until settled right" (Record, pp. 72-73).

It will be noted in the foregoing quotation that respondent Gompers treated of the general subject of injunctions without the slightest relation to the acts with which he is charged, the annual report of 1905 having been submitted about two years prior to the commencement of the original litigation herein. Next we have a quotation from the report of the committee on the president's report, occurring at the same convention, written not by any of the respondents, but cited by the court as supporting the court's conclusions, and reading as follows:

"Your committee heartily agrees with what the president said in his report and your committee would add thereto: * * * that injunctions always have been a prerogative of sovereignty, delegated at times, used direct at others. * * *

"It has been within the last hundred years limited to the protection of property rights and had nothing to do with the enforcement of personal rights. It was under this construction and limitation that it was adopted into our judicial system. The usual argument in favor of its use in labor disputes is that it is needed to protect the property—business—of the party against whom the strike or boycott is levied, and that the labor organization, or members thereof, being unable to respond in damages there is no other remedy at law." * * *

"In connection with this your committee desires to call attention to a so-called anti-injunction bill, introduced in the last Congress, the substance of which bill was that no injunction should be issued by any

judge until he had heard both sides. The result of such legislation would inevitably be to make him the arbitrator in labor disputes and to confer upon him the power to use the writ of injunction to enforce his decree. Your committee recommends that the American Federation of Labor use all its power to prevent the passage of any such legislation." (Record, p. 73).

This is followed by the report of the committee on boycotts, describing their use, with which the respondents are not connected and which report was made two years before the original action. Again (Record, p. 74), we find a long extract from the report of respondent Gompers to the convention of 1906, criticising the wrongful use of injunctions, but having no relation whatsoever to the facts of this case, amounting merely to a discussion of the propriety of what was supposed to be the then existing law on the general subject of injunctions. This is followed by the report of the committee on the president's report (Record, p. 74), which has relation entirely to the support which should be given to the bill pending in Congress, and in its conclusion refers to what it considers an abuse of the power of injunction as follows:

"Your committee believes that there is no tendency so dangerous to personal liberty, so destructive of free institutions and of a republican form of government as the present misuse and extension of the equity power through usurpation by the judiciary" (Record, p. 75).

We find a speech of Mr. Gompers at a labor-day celebration at the Jamestown Exposition (Record, p. 78), cited apparently for the prime purpose of showing a disposition to criticise what he would consider an unlawful exercise of power on the part of courts.

Passing over some quotations having particular reference to the Buck's Stove & Range Company controversy, although

incidentally repeating in spirit language already quoted, we find the following, relied upon by the court, not apparently to prove the charges contained in the committee's reports, but to demonstrate a general want of respect for the courts:

"Injunctions as issued against workmen are never used or issued against any other citizen of our country.

"It is an attempt to deprive citizens of our country when these citizens are workmen, of the right of trial by jury. * * *

"We protest against this discrimination of the courts against the laboring men of our country which deprives them of their constitutional guarantee of equality before the law. * * *

"The issuance of injunctions in labor disputes is not based upon law, but is a species of judicial legislation, judicial usurpation in the interest of the money power against workmen innocent of any unlawful or criminal act. * * *

"The injunctions against which we protest are flagrantly and without warrant of law issued almost daily in some section of our country and are violative of the fundamental rights of man" (Record, pp. 81-82).

Want of respect for the courts is next alleged, in effect, in a quotation of the following language, from a report of Mr. Gompers to the Norfolk convention in 1907:

"It is a blow aimed at the freedom of speech, the freedom of assemblage, the freedom of thought, and particularly the freedom of the press. * * * The attempt to enjoin or prevent the publication of the 'We Don't Patronize' list of the American Federation of Labor, whether by injunction process or other judicial or legislative means, would be in direct violation of the constitutional guarantee and would indeed abridge free speech and a free press. In all the land there is neither law nor power to enforce such a decree" (Record, p. 82).

The respondents have then cited against them language of the committee's report at the same convention (the committee, it is stated, having been appointed by respondent Gompers), which discusses the general theory of injunctions as follows:

"We have carefully considered the president's report regarding the issuance of injunctions as used in labor disputes; we endorse what he has said, the efforts that have been made and the bill drafted and introduced. We urge upon every trade-unionist, friend of free institutions, and of human liberty, the earnest and careful consideration of the use now being made of the equity power given to courts.

* * *

"The theory upon which it is used in labor disputes seems to be that the conducting of a business is a property right, that business is property and that the earning power of property engaged in business is itself property which can and ought to be protected by the equity power in the same way and to the same extent as property, tangible property itself. * * *

"Your committee believes that there is no tendency so dangerous to personal liberty, so destructive of free institutions and of a republican form of government as the present misuse and extension of the equity power through usurpation by the judiciary" (Record, p. 82).

It will be noted that nearly or quite all of the foregoing quotations are from speeches or publications had long before the signing of the decree alleged to have been violated and for the most part long before the filing of the original suit or even before the existence in any way of the controversy out of which the original suit grew. The remainder of the opinion abounds in quotations from speeches and editorials, as to many of which clearly the primary purpose was to discuss the general theory of injunctions and the propriety of their issuance, rather than to make specific reference to the suit out of which this contempt case has grown. It is

fair to believe, therefore, that the main purpose of the quotations has been to sustain what we may consider the major thesis of the opinion, the specific alleged violations being merely accessory or incidental.

It will be borne in mind that all of the quotations we have given under this head were introduced in evidence under objection, as incompetent and irrelevant to the real issue and so far as it was the fact as having taken place long before the events complained of in the committee's report.

While the quotations we have given under this heading in our brief have specific relation to the opinion of the trial court rather than of that of the Court of Appeals, we have presented them as having at least historical value before this court.

*No Evidence of the Existence of Any Unlawful Boycott
After December 23, 1907.*

It is a curious fact that, although the respondents have been found guilty and sentenced to severe punishment for supposed defiance of the orders of court in practically continuing a boycott against an institution under the protection of the court after the passage of an injunction order, there is no affirmative evidence of any kind in the record, from beginning to end, of the existence of any illegal boycott whatsoever affecting, in the slightest degree, the affairs of the Buck's Stove & Range Company after December 23, 1907. The several respondents deny any knowledge of the existence of such a boycott, and no witness has been put upon the stand who has referred to a single instance proving or tending to prove its actual existence, the only facts which could even argumentatively be used being referred to hereinafter. In this respect the case of the committee absolutely fails.

As we read the opinion of the majority in the Court of Appeals no evidence of any continuance of a boycott after December 23, 1907, is found by it and its existence is assumed—not demonstrated.

Respondents' Definition of "Boycott."

It may, therefore, be asked why, if we are correct in our statement, there should have been any finding by the courts below of such a fact, and such finding had to be obtained before a conviction could be had. The only legal ground for the belief that there was a boycott after the date named is found in the editorial written by Mr. Gompers and published as recently as April, 1909, entitled "A Self-inflicted Boycott," and largely quoted from in the opinion of the court (Record, p. 111). The editorial also appears in the record, pages 725-727. This editorial is to be understood by considering exactly what was meant by Mr. Gompers and the other respondents in their use of the term "boycott." Their definition occurs in many places in the record. In "A Review and Protest," written by Mr. Gompers, we find the following (*Federationist*, February, 1908):

"In the application for the injunction it was alleged by the Buck's Stove and Range Company that its business had suffered seriously from the refusal of union workmen and their friends to purchase its stoves and ranges. But would not absolute silence on our part as to its hostile attitude toward certain union employees be dishonest? Why should we encourage our members and friends to buy the Buck's stoves and ranges under the apprehension that this company deals fairly with union labor? Could not union employees then accuse us of an unfair discrimination, of trickery, and humbug? * * *

Justice Gould seems to base this injunction on the assumption that there has been a combination of numbers of wage-earners 'conspiring' to commit unlawful acts. Such is not the fact. The public should understand clearly the difference between combinations for unlawful purposes and the voluntary associations of wage-earners for entirely lawful and proper purposes" (Record, p. 249).

"Secretary Taft says a boycott is a combination

of many to cause a loss to one person by coercing others against their will to withdraw from their beneficial business intercourse by threats.

"We defy any one to prove a single instance in this case where men or organizations combined to 'coerce' others against their will to withdraw patronage from the Buck's Stove and Range Co. Neither coercion, threats, nor conspiracy, in the unlawful sense, have been resorted to, yet the whole injunction is based upon this wrong assumption. * * *

"The members of organized labor are not themselves obliged to refrain from dealing with firms on the 'We Don't Patronize' list of the American Federation of Labor. The information is given them. There is no compulsion. They are entirely free to use their own judgment" (Record, p. 250).

"No person can be compelled to buy an article. If the purchaser chooses to let alone certain products for any reason, or for no reason, there is no way of compelling him to buy" (Record, pp. 250-251).

"Justice Gould, in one portion of his opinion, says:

" 'Defendants (the American Federation of Labor) have the right either individually or collectively to 'sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves.'

"Here he states precisely the whole case of the American Federation of Labor. That is what we have done. This is the sum total of labor's offending. The publication of the Buck's Stove and Range Company and other firms on the 'We don't patronize' list is merely giving truthful information at the request of our members as to whether or not certain firms employ union men and concede the other conditions of employment usually granted by those concerns which recognize union labor" (Record, p. 251).

"It is true that there do exist illegal combinations and conspiracies for the purpose of unwarrantable interference with business or even in its destruction, but those are not organized by wage workers" (Record, p. 252).

In a speech made by Mr. Gompers he says:

"You cannot make me buy anything I do not want to buy. I can tell my friends to do likewise, and they have a right to do what I have a lawful right to do and I have a legal right to tell them to do. No man has a vested right in my patronage. I have a right to bestow; I have a right to withhold and transfer it to anyone else, and I want to say this about that, injunction or no injunction, I won't buy a Loewe hat nor a Buck's stove or range" (Record, p. 326).

In an editorial from the *American Federationist* he says:

"No union could, if it tried, force an employer to enter into an agreement with it. No union attempts such unbusiness-like tactics. The most any union has done is to decline to buy the products of a firm which declined to employ union men and grant the prevailing rate of wages, hours of labor, and conditions of employment. Supposing that they were exercising their constitutional right of free speech, union men have asked their friends and fellow-unionists not to buy such goods. A word as to this custom may not be amiss here.

"No manufacturer, no retailer, has any vested right in the purchasing power of an individual or of the community; no court can confer upon him that right. The patronage or purchasing of goods depends on the whim of those who buy. A purchaser may decline to buy certain goods, for the most absurd reason or no reason; yet the person who has those goods to sell has no resource by which he can force the purchaser to buy them" (Record, p. 330).

In an editorial Mr. Gompers said:

"There is no man who can ever point to any act in my whole life that reflects to my discredit as a man and as a citizen. I want to assure you on my word of honor that so long as I live I will never buy a Loewe hat or a Buck's stove or range until these gentlemen come into agreement with organized labor and grant us conditions of fairness. Then they will

get support and help. Until then, you may call it by any other name—boycott or no boycott—but I won't buy your hats anyhow."

In a report from the committee on boycotts of the Toronto convention of 1909, put in evidence by the committee, the following occurs:

"While the discussion of greater issues in the past year has tended to relegate to the background such rights as that of the boycott, yet I should be recreant in my duty were I to remain silent upon that subject, and thus, perhaps, strengthen an impression which has been assiduously given out by our opponents, that the boycott—that is, the right to withdraw patronage, to bestow it upon whom we please—has been withdrawn from the workers of the country during the legal proceedings in relation to the injunction secured by the Buck's Stove & Range Company" (Record, p. 545).

"We have always held, and we still hold that the workers, or any of the people, have the right to withhold or to bestow their patronage as they would choose; that they have the right to advise friends and sympathizers of this action and of the reasons therefor. It is hardly necessary to state that in the case of the workers, the unfair attitude of the dealer in question has always been the reason for withdrawal of patronage. It has been made clear that he refused to pay the standard rate of wages, and to agree to other equitable conditions which the workers seek through their organizations, and hence the withdrawal of patronage" (Record, pp. 545-546).

In a report made by Mr. Gompers to the Norfolk convention, November, 1907, he said:

"No corporation or company has a vested interest in the patronage of free men. If this be true, and its truth cannot be controverted upon any basis in law, free men may bestow it upon another. And this, too, whether in the first instance the business concern

is hostile or friendly. It is true for any good reason, and in the last analysis for no reason at all" (Record, p. 709).

General Considerations as to Guilt or Innocence of Respondents.

If no unlawful boycott existed and no act in furtherance of it was committed after December 23, 1907, then we contend that it was an error to find the respondents guilty of any of the charges filed against them.

We have already laid down in this brief the proposition that there was no evidence whatsoever tending to indicate the existence of any conspiracy against the Buck's Stove & Range Company after December 23, 1907, even if there was such conspiracy prior thereto, and no evidence tending in that direction, in any degree, unless the editorial in the April, 1909, *Federationist*, entitled "A Self-inflicted Boycott" (Record, p. 725), and the resolution of the United Mine Workers of America of January, 1908, could be regarded as evidence of its existence.

We need not enlarge upon what has been said with regard to the editorial in question, except to call attention to this circumstance. Mr. Gompers' use of the word "boycott," and the meaning placed upon it by him, has been demonstrated by extracts from the record, showing his understanding as to the language it was permissible for him to use, and with this idea in mind it is worth while to examine the order of December 18, 1907, reproduced in the same words, save as to parts which become immaterial in the final decree of March 23, 1908. The essential portion of the first order was that the defendants were—

"Restrained and enjoined until the final decree in said cause, from conspiring, agreeing or combining, in any way, to restrain, obstruct or destroy the business of the complainant," etc.

To this end they were specifically directed to refrain from a large number of acts which the court evidently considered tended in that direction, including, among others, the circulation of the *American Federationist* or other document which in any way referred to the complainant, its business or product, in the "We Don't Patronize" or "Unfair" list of the defendants, or contained any reference to the plaintiff in connection with the term unfair or we don't patronize, or called the attention of its customers or dealers or tradesmen, or the public, to any boycott against them, or that it should not be purchased or dealt in by any dealer, tradesman, or person for the purpose of injuring or interfering with its business or product, or coercing any person not to purchase the same, and from intimidating any person who might buy or sell it.

While this decree is very sweeping in its terms it is not, we think, to be supposed that it contemplated shutting up the mouths of the respondents, in any respect, except it be for the purpose of furthering such a boycott as the court had declared to be unlawful. Assuredly if there were no boycott of any unlawful character in existence, it was not the intention of the court by this decree to prevent the respondents from refusing to deal in the product of the Buck's Stove & Range Company, or from advising others not to so deal. We will proceed to explain the reason for giving this interpretation to the decree in question, although its language is of the broadest conceivable character.

Before the signing of the decree, Mr. Justice Gould, who signed it, had accurately described the respondents' rights in the premises. He said:

"Defendants have the right, either individually or collectively, to sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves."

If the respondents possessed this right ascribed to them by Mr. Justice Gould, they possessed it equally as well after as before the decree of December 18, 1907, except it be that they were undertaking to exercise it pursuant to some conspiracy to injure which would be of an unlawful character. If they possessed the right, they likewise possessed the power to make public declaration of their intention to exercise the right.

The present record will be searched in vain, we say, to find a single instance on the part of the respondents, or of their associates, wherein a conspiracy to injure, or the actual infliction of injury was done after the date in question. The testimony of all of them is to the effect that they know of no boycott having been prosecuted after the date named, meaning an unlawful boycott, such as is described by Justice Gould in his opinion, and there is not one word of evidence in contradiction of this fact. There were after that date no threats of any kind leveled against the Buck's Stove & Range Company, or its customers; no publications by anybody of which the respondents had any knowledge, save those made by themselves; no issuance of circulars affecting any of the customers of the Stove Company; no parading of banners; no obstruction of the sidewalk; no visits to customers to dissuade them from selling Buck's stoves; no abandonment by any customer of his relations with the Stove Company; no warnings in any manner to customers not to handle the stoves under a penalty of being boycotted; no vote to fine any one who might deal with the Stove Company, save the vote of the United Mine Workers of America, which we shall have occasion to discuss; no letters from national organizations calling upon any one to boycott the Stove Company's customers, and no intimidation of any kind whatsoever—in short, none of the things which are set out in the opinion of Mr. Justice Gould and which caused him to sign an injunction order. In other words, as far as this record discloses, none of the respondents or any of their associates went

one step beyond the point Mr. Justice Gould, in his opinion, said they had a right to go..

If we are correct in the foregoing statements, and we invite any contradiction, then there was no departure by the defendants from the idea sought to be conveyed by Mr. Justice Gould in his order.

Realizing that the order was inapt in its terms to carry out the opinion expressed by Mr. Justice Gould, his attention was called at once to the fact that:

"It might be construed to enjoin the defendants from announcing to others that they had united and combined not to deal with others who should deal with plaintiff or purchase its products,"

and also that it might be

"Construed to prevent the defendants and their associates from saying to others that they had united and combined not to patronize the products of the plaintiff,"

and also that it might be

"Construed to enjoin the defendants from uniting together to agree not to patronize plaintiff's products."

What happened thereafter appears from the testimony of Mr. Morrison. He states (Record, p. 599) that—

"Mr. Ralston stepped up to the bar and stated to the court that the defendants thought the injunction deprived them of their rights, and would like to have the judge state its limitations.

"Judge Gould said in substance that if he did, it might deprive the plaintiffs of the relief they desired. That if the defendants were ignorant men and did not know their rights, it might be a different proposition, but that he had read a statement made by one of the defendants, or an article, which indicated to him that they understood their rights."

Again, on page 609, he says:

"Judge Gould refused to modify the motion that had been made. Was not familiar with the motion made. Had not read it. He remembers that the motion was denied, and thereupon something occurred orally. Witness went to Mr. Ralston, and said 'I wish you would ask the court to define the limitations of the injunction.' To the best of witness' recollection Mr. Ralston advanced and said 'Your Honor, the defendants would like to have you define the limitations of the injunction. The defendants seem to think that their rights—does not know whether he said personal rights or constitutional rights—are denied to them.'

"The judge replied that if he defined the limitations of the injunction it might prevent the plaintiffs from securing the relief they desired. That if the defendants were ignorant men and did not know their rights it might be considered. But that he had read statements or articles which led him to believe they understood their rights and would not be inconvenienced because of his refusal to state the limitations of the injunction. Remembers the incident because he wanted to know what the injunction meant."

The respondents thereafter were left to interpret the injunction in the light of Judge Gould's opinion, and to believe that it was not his desire or intention that the order should be construed as exceeding the limits of the opinion.

Bearing in mind, therefore, Judge Gould's opinion, interpreting the order in the light of the opinion, let us consider the things which were charged against the respondents and what may be construed as proof, and determine, if we may, whether any possible offense was committed by the respondents. In this connection we will take up first the case of—

Samuel Gompers.

1. The essence of the first charge against him (Record, p. 4) is that after the passage of the decree, and before it became operative by the filing of the bond required by it, he hastened the publication and issuance of the January *Federationist*, containing the name of the Stove Company in the "We Don't Patronize" list, and that his purpose in hastening it was to affect the complainant's business, delivering the copies to the American News Company and to the Washington News Company for distribution, taking no steps to prevent the circulation after it had been learned that the injunction undertaking had been given. If it were true that he hastened the circulation for the purpose indicated, this would not constitute an offense, for the injunction might never have become operative by the filing of the bond and, under the decisions of this court, did not become operative until such bond was filed. (See *Drew vs. Hogan*, 26 App. D. C., 55.) In so far as this paragraph undertakes to charge that said Gompers took no steps to prevent circulation by the news companies after the filing of the bond, it is unimportant, because it does not appear that said companies circulated any thereafter. In so far as it undertakes to charge said Gompers did not, after the injunction went into effect, undertake to stop the circulation, it is not sustainable, for we have the testimony of several witnesses, including Gompers himself, to the fact that as soon as the bond was filed all employees were instructed not to circulate any without referring the matter to him, and that he never thereafter authorized such circulation or knew of any circulation having taken place.

2. The second charge is to the effect that after the filing of the undertaking he caused and permitted the further circulation through the mails, and otherwise, of the number in question. This is not sustained by proof, but is contradicted in the manner we have just stated.

3. This paragraph charges that after December 23, 1907, said Gompers caused and permitted to be circulated several thousands of copies of the printed proceedings of the convention of the Federation held in November, 1907, which proceedings referred to the Stove Company and its business in connection with the "Unfair" list, and in addition was alleged to contain a report which he had submitted to the convention, discussing the issuance of injunction, and an editorial of which he circulated 30,000 copies, contained in the February issue of the *American Federationist*, discussing the opinion of Mr. Justice Gould. The report so alleged to have been submitted appears to have been made to the Nashville convention ten years previously (Record, p. 282), although both Judge Wright and the majority of the court of appeals cite it as having been made and circulated in 1907.

Of the things actually published therein, it is to be said, as appears from the testimony of Mr. Gompers, and Mr. Morrison as well, that while the proceedings were circulated, and those proceedings contained his report, the volume in question was one of some 400 to 500 pages, in small type, and there were discussed within its covers a great variety of subjects, the matters in question concerning but one of them, and that the volumes were designed to inform the members of the organizations of the proceedings of their representatives. They were not circulated with any reference whatsoever to the Buck's Stove and Range Company, and it never occurred to them that in such circulation they were, in anywise, violating the injunction, or doing anything having any reference whatsoever to its purposes.

As to the editorial referred to, its inclusion under this heading is an apparent error, as it was not published until long after the circulation of the report of the proceedings. Besides which the editorial, while reviewing and discussing the opinion of Mr. Justice Gould, was only such an editorial as might be written by any one viewing it from respondents' standpoint and desiring to discuss the issues involved. It contains nothing which is out of harmony with

the opinion of Mr. Justice Gould, in so far as the exercise of any right of speech or action is concerned, stating, as the opinion does, that—

“Defendants have the right either individually or collectively to sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff’s stoves; they have also the right to decline to traffic with dealers who handle plaintiff’s stoves.”

In fact, in the course of the editorial Mr. Gompers uses the following language:

“It would seem that having made the above-quoted statement, Justice Gould would have found in it the reason for a refusal to issue the injunction. He, however, goes on to assume that there has been some unwarrantable interference with the plaintiff’s business, though neither in his opinion nor in the injunction itself does he make it clear how he arrived at the conclusion that the union course was any other than as indicated in his own language.”

4. Under this heading Mr. Gompers is charged with having published in the February *Federationist* a copy of the decree of injunction, with an editorial commenting upon its effects as being limited to the District of Columbia, and as to which Gompers is alleged to have said that he thought the opinion of complainant’s counsel, referred to in it, would be valuable to working people, so that they might be guided by it. It is further said that the publication of this editorial was followed by articles misrepresenting the court, published in various trade papers throughout the country.

That Mr. Gompers made the publication is undoubted, it not being in furtherance of an unlawful boycott, and that he had a right to interpret the decision, even erroneously, if he were in error, ought not to be the subject of question.

Why Mr. Gompers should be responsible for the profanity and bad rhyme of which some unknown writer was guilty in some part of the country, not disclosed by this

paragraph, does not seem obvious. Surely neither the one nor the other was the natural or logical consequence of the thing he did.

5. Mr. Gompers is next charged with uniting with Morrison, Mitchell, and others in circulating many thousands of copies of a paper entitled "An Urgent Appeal for Financial Aid," etc., and also causing the same to be printed in the February, 1908, *Federationist*, containing language descriptive and critical of the injunction decree signed by Mr. Justice Gould, and that he caused the wide circulation of these documents.

We do not think that any person reading this appeal could have any reasonable doubt as to the purpose for which it was written and circulated. The three respondents with others were the subjects of attack in court through the medium of a suit in equity. They were not themselves men of wealth, although representing an organization enormous in size. The attack was made upon them as officers of that organization. They had a right to expect that the organization would support them as its representatives against this attack. They had a natural right, therefore, to appeal to members of that organization for aid in the existing suit. In fact, the persons to whom they appealed were persons attacked, because the organization to which they belonged was affiliated with the American Federation of Labor. The appeal, therefore, to all intents and purposes, was directed to fellow-defendants. It is as if Mr. Gompers had gone to Mr. O'Connell, a fellow-defendant, and said to him, "We must raise money to defend this stove company suit, in which Judge Gould has issued an injunction. I think the injunction is unsound in principle, and that you and all other members of your organization should contribute to resist it, and to perfect an appeal should a final injunction be issued." This would constitute a violation of the strict letter of the order of Mr. Justice Gould, in that reference would be made

to the existence of the injunction, and its effect, and the attention of Mr. O'Connell would be called to the fact that there had theretofore, as stated by the court, existed a boycott. And yet, nevertheless, such an interpretation of the injunction would be no more reasonable than its literal interpretation as applying to the attorneys in the case; which literal interpretation would make them guilty of contempt for the writing of a necessary brief. It cannot in justice be thought that the intention of Mr. Justice Gould was to deprive respondents of the means of self-defense, either by raising of funds therefor, or by the employment of attorneys who would have to do the work usually devolving upon them. The claim that such acts constitute contempt of court seems to us unfounded.

It is true that with this communication was sent out an editorial (Record, p. 267), which editorial discussed at length, though in a temperate way, the possible effect of Mr. Justice Gould's action. This editorial was a natural and necessary part of the "Urgent Appeal." If codefendants were to be asked to furnish funds for the carrying on of an appeal, they were entitled to be informed of the nature of the issues and of the argument which it was believed would tend to overthrow the preliminary injunction. This was, as is manifest from its perusal, the very purpose for which the editorial was circulated, and it ought not to be treated as if its prime purpose and object was something entirely different, a purpose which has been disavowed on the stand by all these respondents, and which is inconsistent with the natural and innocent purpose appearing upon the very face of the document itself.

6. Mr. Gompers is charged with having published in the March, 1908, *Federationist* the following (Record, p. 10):

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

We have but to call the attention of the court to the fact that both by the opinion of Mr. Justice Gould and the several opinions of the Court of Appeals this was a mere statement of a legal fact, and the fact itself is not such a one as would be associated with the idea of unlawful boycott.

7. It is said that Mr. Gompers published in the April, 1908, *Federationist* the following (Record, p. 10):

"The temporary injunction issued by Justice Gould, of the court of equity, of the District of Columbia, in the (Van Cleave) Buck's Stove & Range Company of St. Louis against the American Federation of Labor, its officers and all others, has been made permanent. This case will now be carried to the Court of Appeals of the District of Columbia.

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

* * * * *

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove & Range Company of St. Louis. Fellow-workers, be true and helpful to yourselves and to each other. Remember that united effort in the cause of right and justice must triumph."

Of this we have the same comment to make as under the head of 6.

8, 9, 10, 11. In these several paragraphs Mr. Gompers is charged with the publication of editorials or the making of public speeches in different parts of the country, the fundamental idea of which is expressed in the quotations already made, and, therefore, we are not called upon to elaborate the argument under each particular head.

12. Under this heading Mr. Gompers is charged with the language contained in the report to the Executive Council of the Federation of Labor, made in September, 1908, and thereafter published in the *Federationist* for November, 1908, the comment made being such as he would naturally have a right to make to his fellow-associates in the litigation, and which may not be sustained as contempt on his part, unless it be contempt for fellow-defendants to associate together and make known to each other the litigation in which they are engaged, and equally contempt to counsel, one with the other, as to the best methods of meeting such litigation. The fact that the counseling is held in public cannot be treated as contemptuous of the court, except it be that it be had for the purpose of defeating the court's order. This intent, we have to repeat, has been denied by the several respondents, and again we say there is no evidence of the existence of any continuing unlawful boycott, to which the wrongful intent would have to have relation.

13, 14, 15. These several paragraphs have reference to speeches made by Mr. Gompers on different occasions, commenting upon the effect of the injunction and describing its limitations, which limitations are indicated by the very language of Mr. Justice Gould and the subsequent language of the Court of Appeals in their several opinions, as hereinbefore pointed out.

16. This paragraph refers to language of a report made by Mr. Gompers to the convention of the Federation of Labor held in November, 1909, and referring to the injunction granted December 18, 1907, and which had expired by its terms nearly two years before the language was used. The language, therefore, was critical of a decree which had long before expired by its terms, but could not, because of its non-existence at the moment, be presumed to be in contempt of it.

There was a curious condition existing with regard to this part of the charge, as particularly illustrated by the trial court. (The language which the committee says Mr. Gompers was in contempt for using reads as follows (Record, p. 14):

"When a judge so far transcends his authority, and assumes functions entirely beyond his power and jurisdiction, when a judge will set himself up as the highest authority in the land, invading constitutionally guaranteed rights of citizens, when a judge will go so far in opinion, decision and action, that even judges of the Court of Appeals have felt called upon to criticise his action—'unwarranted' and 'foolish,' under such circumstances it is the duty of the citizen to refuse obedience and to take whatever consequence may ensue."

The language which Mr. Justice Wright held the respondent guilty for having used reads as follows:

"While the discussion of greater issues in the past year have tended to relegate to the background such rights as that of the boycott, yet I should be recreant in my duty were I to remain silent upon that subject, and thus, perhaps, strengthen an impression which has been assiduously given out by our opponents, that the boycott—that is, the right to withdraw patronage, to bestow it upon whom we please—has been withdrawn from the workers of the country during the legal proceedings in relation to the injunction secured by the Buck's Stove and Range Company."

"It will be remembered that the injunction was sought to primarily restrain the people in their right to quit buying Buck's stoves and ranges. It overreached itself so far that the right to freedom of speech and press became involved. However, no consideration of the injunction had been possible by the courts without taking up the principle involved in the boycott."

It further appears from the opinion of Mr. Justice Wright that Mr. Gompers was apparently held responsible for the use by the Committee on Boycotts of the following language when reporting to the Federation (Record, pp. 110, 111):

"But under present conditions, the boycott is a necessary legal and moral weapon, and one which the president well says, there should be no hesitation to resort to when other remedies fail, and the occasion demands the unusual and drastic antidote
* * *

"We say, that when your cause is just and every other remedy had been employed without result, boycott; we say, that when the employer has determined to exploit not only male adult labor, but our women and children, and our reasoning and appeal to his fairness and his conscience will not sway him, boycott; we say, that when social and political conditions become so bad that ordinary remedial measures are fruitless, boycott; we say, when labor has been oppressed, brow-beaten and tyrannized, boycott; and finally we say, we have the right to boycott, and we propose to exercise that right.

"In the application of this right to boycott, to paraphrase the president, 'we propose to strive on and on.' "

It will be noted from the foregoing that the injunction apparently charged as having been violated was the dead injunction of December 18, 1907, which could not have been violated on the date in question, and that the respondent Gompers was not found guilty by the trial court of the particular charge made by the committee, but of another charge, there being superadded, for a purpose not obvious from the reading of the opinion, a declaration by the Committee on Boycotts.

Having therefore been found guilty, in the first place, of the use of language not charged as constituting contempt under the report of the committee, and for the action of other people, and not having been found guilty of the lan-

guage complained of by the committee, although sentenced therefor and going no further, the decision of the trial court was infected with such error as constituted absolute invalidity.

John Mitchell.

1. This respondent is charged with contempt for uniting with Samuel Gompers, Frank Morrison, and others, in circulating a paper called "Urgent Appeal," etc., and copies of reprint of the editorial from the February, 1908, *Federationist*, hereinbefore referred to. Mr. Mitchell was ill at the time, and had nothing whatever to do with signing or circulating either of these documents. He could not, therefore, be held responsible therefor, there being no such thing known as contempt by ratification, and in point of fact, as we have heretofore indicated, there was no contempt whatsoever in the acts complained of.

2. This paragraph charges Mr. Mitchell with circulating the *American Federationist* containing the interpretation placed upon the order granting the injunction by Mr. Gompers, and commented on when treating of the alleged offenses committed by him. We have the same reply to make to this as we have made to paragraph No. 1—that is, that Mr. Mitchell took no part whatever in this circulation and knew nothing about it until afterwards.

3. Mr. Mitchell is charged with having presided over the meeting of the Annual Convention of the United Mine Workers of America, held on January 25, 1908, at which the following resolution was adopted (Record, p. 140):

"Whereas, The Buck's Stove & Range Company, of St. Louis, Mo., have taken legal steps to prevent organized labor in general, and the officers and executive committee of the A. F. of L. in particular, from

advertising the above-named firm as being on the 'Unfair' or 'We Don't Patronize' list, and

"Whereas, By the issue of such an injunction or restraining order as prayed for by the above-named firm, organized labor will be deprived of one of its most effective weapons, and

"Whereas, J. W. Van Cleave, the president of the National Manufacturers' Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"*Resolved*, That the U. M. W. of A., in Nineteenth Annual Convention assembled, place the Buck's stoves and ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above make be fined \$5.00, and failing to pay the same be expelled from the organization."

It is true that Mr. Mitchell presided at the opening of the session at which the resolution was adopted, but there is no satisfactory proof that he was in the chair at the time of the adoption of the resolution. Mr. Mitchell, however, has declared in his testimony, that he has no recollection of the circumstance of the adoption of the resolution; that if the record says he was present he presumes he was.

It is true that on several occasions Mr. Mitchell made use in substance of the following language, it appearing in the February, 1908, *Federationist*, and quoted in the opinion of Mr. Justice Wright (Record, p. 119):

"Mr. Mitchell is charged with and admits having presided at a convention of the United Mine Workers of America at which a resolution was adopted declaring 'unfair' the products of the Buck's Stove & Range Company.

"It was Mr. Mitchell's duty as president of the mine workers' organization to preside over this convention. He had no knowledge that a resolution upon this subject was to be considered, and when it came before the convention he was so little impressed with its significance that he did not even remember the subject of the resolution until the contempt proceedings were instituted. However, even though he

were conscious of the full import of the resolution referred to, he committed no offense against the law by retaining his position as presiding officer of the convention when the resolution was adopted.

"He had, of course, three alternatives, none of which a self-respecting man could have availed himself. He could have resigned his position as president of the United Mine Workers of America, or he could have called some other member to take the chair, thus shirking his own responsibility by placing it upon the shoulders of another, or he could have become the advocate and defender of the Buck's Stove & Range Company, and opposed the passage of the resolution.

"The injunction did not require Mr. Mitchell to advocate the cause of the concern, he was not commanded to defend its attitude in the controversy with its employees; but it seems that his failure to do so constituted an offense against the court for which he is sentenced to prison."

This language was treated by Mr. Justice Wright as indicative of an admission that he was present and knew all about the resolution at the time, although the admission so called is put in this particular extract in a qualified way, the qualification itself indicating the want of complete knowledge on the subject on the part of Mr. Mitchell. He says "even though he were conscious of the full import of the resolution referred to," etc. In his several speeches on the subject, while this qualification is not expressed, it is perfectly obvious to the careful reader. Nowhere does he say that he had knowledge of the resolution or conscious knowledge of its purport at the time the question of its adoption was submitted to the convention, although the Court of Appeals treats his statements as if they showed such knowledge.

We have again to say that this resolution does not appear by any testimony in this record ever to have been followed up or acted upon by any miners' organization in the country. Whatever indication it may afford, therefore, of a willingness on the part of the national organization of miners to

boycott in a manner which has sometimes been declared objectionable by the courts, it is not proof of the actual existence of a boycott, a distinction which must not be lost sight of.

Frank Morrison.

1. Mr. Morrison is charged with having received and becoming the custodian of a large number of copies of the printed proceedings of the 1907 *Federationist*, which are stated, as indicated in the charges against Mr. Gompers, to have contained language indicative of an intent to boycott the Stove Company, and providing for a so-called campaign of education (which in point of fact, according to the record in this case, seems never to have been carried out in the slightest degree). We have explained in discussing the case of Mr. Gompers that the proceedings were not and could not have been circulated for the purpose of any unlawful boycott.

2. Mr. Morrison is charged with uniting with others in printing and circulating the "Urgent Appeal" and the editorial of the February, 1908, *Federationist*. Under the heading of "Samuel Gompers," we have sufficiently commented upon this charge.

3. Mr. Morrison is charged with the circulation of the editorial in the *American Federationist* for February, 1908, construing the effect of the injunction of December 18, 1907. We have sufficiently discussed this matter and need not go into it further.

4. Mr. Morrison is charged with circulating many copies of the *Federationist* for the months of January, February, March, April, May, June, and September of 1908, each of which not only referred to the Stove Company in connection with the "We Don't Patronize" or "Unfair" list of the Federation of Labor, but made editorial and other reference to the complainant in connection therewith, and to the boycott

declared by the Federation and the desirability of continuing and prosecuting the said injunction against it.

While Mr. Morrison did undoubtedly circulate many copies of the *Federationist*, some of which made editorial or other reference to the Stove Company, as a party to the then pending litigation, it is incorrect to say that any article in proof in this case discusses the desirability of continuing and prosecuting any boycott in any unlawful sense against the Stove Company. We may add that it does not appear that Mr. Morrison ever circulated a single copy of the January, 1908, *Federationist*, except one sent to Canada for a specific purpose not in connection with the Stove Company.

Under the fifth heading of this brief we shall find occasion to discuss still more fully and in detail the facts relating to the offenses charged against the respondents.

III.

10. THE MAJORITY OF THE COURT OF APPEALS ERRED IN FINDING THE RESPONDENTS GUILTY OF THE CHARGES AGAINST THEM AND ALSO IN SO DOING RELYING ON MATTERS NOT IN EVIDENCE AND ON CHARGES NOT SUSTAINED.

In the other portions of our brief, we have discussed at length the matters particularly relating to this assignment of error with but a single exception. The opinion of the majority contains the following statement:

"That respondents did not intend to respect the order of the court is apparent from the following extract from the report of Gompers made to the Norfolk Convention, which occurred between the date of the filing of the bill and the making of the temporary order, and which was published and circulated after the order became effective: 'Recently

one of the branches of the Federal courts decided by a majority vote that the boycott is illegal. * * * We should demand the change of any law which curbs the privilege and the right of the workers to exercise their normal and natural preferences. In the meantime, we should proceed as we have of old, and, wherever a court shall issue an injunction restraining any of our fellow-workers from placing a concern hostile to labor's interests and themselves on our "Unfair" list, and enjoining the workers from issuing notices of this character, the further suggestion is made that upon any letter or circular issued upon a matter of this character, after stating the name of the unfair firm and the grievance complained of, the words "We have been enjoined by the courts from boycotting this concern" could be added with advantage."

It is erroneous to say that the matter above quoted was presented in the report of respondent Gompers made to the Norfolk Convention, "which occurred between the date of the filing of the bill and the making of the temporary order, and which was published and circulated after the order became effective," the reason being that the matter referred to in the said opinion occurs only in the proceedings of the Nashville Convention of 1897, and not in the proceedings of the Norfolk Convention of 1907, and there is not the slightest evidence in the record to show that it was circulated at any time after about the time of the Convention of 1897, the only reference in the proof to the same being, so far as these respondents know, contained on page 282 of the record, and the statement with relation to the circulation thereof in the opinion of Judge Wright and in the committee's report being entirely unfounded.

IV.

1. THE SAID COURT DID NOT PASS EXPRESSLY UPON ERROR ASSIGNED IN THE PROCEEDINGS BELOW, WHEREIN THAT COURT OVERRULED MOTION TO QUASH THE SAME UPON THE GROUND THAT THEY WERE CRIMINAL IN THEIR NATURE, THESE PROCEEDINGS BEING BROUGHT IN EQUITY.

2. IT DID NOT EXPRESSLY PASS UPON THE ERROR COMMITTED BY THE COURT BELOW IN OVERRULING THE MOTION TO SET ASIDE THE REPORT SUBMITTED BY THE COMMITTEE.

3. IT DID NOT PASS UPON THE ERROR COMMITTED BY THE COURT BELOW IN REFUSING TO STRIKE OUT THE NAMES OF THE COMMITTEE AND SUBSTITUTE THE NAME OF THE ATTORNEY OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, THE COMMITTEE HAVING BEEN BIASED BY REASON OF THEIR EMPLOYMENT AS ATTORNEYS FOR THE PLAINTIFF IN THE SUIT OF THE BUCK'S STOVE AND RANGE COMPANY VS. SAMUEL GOMPERS ET AL.

11. THE MAJORITY OF THE COURT OF APPEALS ERRED IN INFLECTING A CRIMINAL PUNISHMENT WHEN SITTING OTHERWISE AS A COURT OF EQUITY.

The subjects embraced within these four several assignments we have discussed somewhat in connection with other

subject-matter of this brief. We desire particularly in this connection to again insist that these proceedings, being brought in equity, under an equity caption, were improperly brought, the matter complained of being purely criminal and there not being, at the time, any equity cause pending in connection with which it was proper to bring contempt proceedings. Not denying, but admitting, that courts, whatever may be their nature, have a general right to prosecute contempt proceedings, we nevertheless submit that such prosecution can only be in connection with some matter before the court; otherwise their powers are limited and restricted according to the nature of the court in which action is sought.

Further we have shown in this brief and in the record the absolute biased character of the attorneys who were appointed as a committee—the impossibility of their performing the judicial function of determining whether an offense had been committed. The basic step therefore in this case was improper, and the whole proceedings are erroneous.

V.

12. EACH OF THE DEFENDANTS ASSIGNS AS ERROR THAT BY HIS APPEARANCE AND ANSWERS HE PURGED HIMSELF OF ANY POSSIBLE CHARGE OF CONTEMPT, BUT THAT NEVERTHELESS THE COURT OF APPEALS ERRED IN HOLDING HIM GUILTY THEREOF.

Assignment No. 12 (pp. 789, 791).

RULE AS TO PURGATION.

Since these proceedings are purely criminal proceedings to punish the defendants for alleged criminal contempt, since each of the defendants has explicitly denied any intention

to violate, or any violation by him of, the provisions of the injunction against the prosecution of a boycott, which, as will appear later, are the only provisions of the injunction of which they are accused, in these proceedings, of having violated, and since it is very questionable whether the acts and utterances with which the defendants are charged do, in fact, indicate an intention to violate, or even a violation of, these provisions of the injunction, the defendants are entitled to the benefit of the rule that a defendant in criminal contempt proceedings may purge himself of contempt by swearing that, in doing the acts charged, he did not intend to commit a contempt.

In the May case, 1 Fed., 737, which was a prosecution of a juror for contempt in corruptly conferring with a party to a suit during the trial, Brown, J., said (p. 743):

"It is a cardinal rule in proceedings for a criminal contempt that the answer of the respondent cannot be traversed and must be taken as true. If false the Government is remitted to a prosecution for perjury. 4 Black. Com., 287; In the matter of Pitman, 1 Curt., 186; U. S. *vs.* Dodge, 2 Gall., 313; State *vs.* Earl, 41 Ired., 464; Burke *vs.* The State, 47 Ired., 528; People *vs.* Feed, 2 John, 290; *In re* Moore, 63 N. C., 397; Nomes *vs.* Cummings, 1 Lester, 40.

"But the answer must be credible and consistent with itself, and if the respondent states facts, which are inconsistent with his avowed purpose and intention, the court will be at liberty to draw its own inferences from the facts stated. In the matter of Crossley, 6 Term R., 701; *Ex parte* Nowlan, *Id.*, 118."

In the case of *In re* Purvine, 96 Fed., 192, which involved the power of a court of bankruptcy to commit a bankrupt for contempt in failing to obey an order of the court requiring him to pay over to his trustee money found to be in his possession and control, Circuit Judge Shelby, in a dissenting opinion, said (p. 196):

"In proceedings to punish for contempt it is the general rule not to permit the respondent's answer to be traversed. It is taken as true, and, if false, a prosecution may be had for perjury. Blackstone so states the rule. 4 Bl. Comm., 287. This rule is followed by the Federal courts. *In re May*, 1 Fed., 737; *U. S. vs. Dodge*, 2 Gall., 313, Fed. Cas. No. 14,975. *In re Pitman*, 1 Curt., 186, Fed. Cas. No. 11,184, it was held by Judge Curtis that, although there were precedents for the introduction of other evidence, the respondent's answer was to be treated as evidence. The court said: 'Now, one of the most important privileges accorded by law to one proceeded against for contempt is the right to purge himself, if he can, by his own oath. So rigid is the common law as to this that it does not allow the sworn answers of the respondent to be controverted as a matter of fact by other evidence.'

"This general rule of the common law has exceptions, not material to be discussed here. The rule is there cited to show that the respondent's answer is a material, and often a controlling, part of the record in the proceedings for contempt of court."

And in *Tolman vs. Leonard*, 6 App. D. C., 224, wherein it was held that the answer of a respondent to a rule to show cause why he should not be punished for contempt of court for refusing to obey an order to pay alimony is not conclusive, Mr. Justice Shepard, in delivering the opinion of the court, said (p. 234):

"The answer may be conclusive, probably is, in the ordinary proceeding for what has been called criminal contempt, where the sole object is the punishment of the offender. But in equity, where the object is to compel performance of a decree in aid of a private right, and the punishment of the offender may or may not be made incidental thereto, the answer is not conclusive and the court may look beyond it if justice demands."

In *Bouvier's Law Dictionary*, under the title "Purgation," it is said:

"In modern times a man may purge himself of an offense in some cases where the facts are within his own knowledge; for example, when a man is charged with a contempt of court he may purge himself of such contempt by swearing that in doing the act charged he did not intend to commit a contempt."

In a comparatively recent note in volume 9 of *Lawyers' Reports Annotated*, New Series, page 1119, published in 1907, entitled "Effect of Denial under Oath to Purge One of Criminal Contempt," and which is expressly "confined to cases in which the contempt charged—consists of what is usually and properly designated criminal contempt," it is said (p. 1119):

"Cases of direct contempt seldom present the question raised by the subject of this note, as such contempt generally arises in the immediate presence of the court, and is dealt with by it in a summary manner.

"The weight of authority may be said to hold that, in cases of constructive or indirect criminal contempt, if the contempt consists of acts or statements which are ambiguous in character, and which are capable of two constructions, one of which would amount to contempt and the other not, so that the intent of the party himself becomes the material question of inquiry, then a denial on oath by such party of an intent to show disrespect to the court is conclusive, and cannot be disputed. So, also, where intent in reference to the contempt charged is the gravamen of the offense, a denial of intent, under oath will purge the contempt. Where, however, the conduct or language used is subject to but one reasonable construction, and that is that contempt was intended, or where intent itself is not the gravamen of the contempt charged, then a denial of intent under oath will not be conclusive."

Then follows an exhaustive review of the authorities consisting of a critical analysis of the cases by stating the facts, showing the holdings and quoting from the opinions. The

note is too long to permit of its condensation within reasonable limits, but a perusal of the note itself will compel the conclusion that the general statement which is quoted above is amply supported by the authorities cited and reviewed. And the collection of the decisions seems to be exhaustive.

Since the publication of this note there have been a number of cases wherein the doctrine is recognized, either in the actual decisions or in *dicta*.

In *Perry vs. Kanaz*, 167 Ill. App., 250, it is held that in criminal contempts alleged to have been committed out of the presence of the court, if the contemnor's answer is sufficient to acquit of the charge he must be discharged, and a number of Illinois cases are cited in support of the proposition. And in the case of *Hake vs. People*, 230 Ill., 174, the court, while not deciding the question, clearly recognizes the doctrine as applicable in proceedings at law for criminal contempt.

The doctrine seems to be recognized in the case of *Ex parte Ryan*, 62 Tex. Cr. App., 19; 136 S. W., 65.

In the late Missouri case of *Ex parte Nelson* (Mo. 1913), 157 S. W., 794, proceedings for contempt in publishing a newspaper article reflecting upon the court, Woodson, J., in delivering the opinion of the court said (p. 802):

"When the meaning of the publication is ambiguous and uncertain, usually the rule is that the sworn answer of the alleged contemnor in a case of constructive contempt, denying any intention to traduce or vilify the court, is held to be conclusive in his favor, but this rule does not apply where the publication is unambiguous and clearly constitutes a contempt."

The cases at bar differ from the case which was presented to this court in *United States vs. Shipp*, 203 U. S., 563, wherein the only reasonable construction to which the conduct of the defendants was subject was that contempt was intended. In each of these cases the acts and utterances re-

lied upon to establish a contempt of court are not only of so ambiguous a nature as to call for the application of the rule allowing the purging of contempt, if there ever can be such a case, but to raise a serious question whether there is any evidence to establish a violation of the provisions of the injunction directed against the prosecution of a boycott.

It is believed, and we shall presently demonstrate, that the facts of these cases present much stronger grounds for giving effect to the denial by the defendants under oath of any wrongful intent than the grounds which this court found sufficient in the case of Merrimack River Savings Bank *vs.* City of Clay Center, 219 U. S., 527.

DENIALS BY DEFENDANTS OF WRONGFUL INTENT.

While the charges contained in the reports of the committee do not specify the particular provision or provisions of the injunction which it is claimed that the defendants have violated, the trial court made it clear toward the end of the trial that the charges against the defendants are the violation of only those provisions of the injunction enjoining a boycott. The court, in effect, so stated in language addressed to Mr. Mitchell when he was testifying (fols. 756-7). This was later made more clear by language addressed to one of counsel for the defendants, wherein the court said, in part, that (fol. 769),

“the proceeding now before the bar is understood by the court to present only charges for violating the injunction of the prosecution of a boycott and not as charging any of these respondents or calling upon any of them to answer for language, either written or oral, pertaining to any other subject or discourse, save that single subject and the isolated consideration whether that language, written or oral, was written or spoken for the distinct purpose of forwarding a boycott.

"That is all these proceedings present and that is all the question that is in them."

Each of the defendants not only filed a sworn plea of not guilty, but each went upon the witness stand and, under oath, disclaimed any intention of violating any of the provisions of the injunction enjoining a boycott and denied that any of their acts and utterances violated those provisions by furthering a boycott.

In disclaiming any wrongful intent, Mr. Gompers testified that he "did not, after December 23, 1907, write or publish any article with the intent to aid, assist, or abet, or encourage a boycott against the Stove Company. In fact, as stated in one of the editorials, published in the *Federationist*, the boycott was simply an incident, and an insignificant incident, as compared with the broader question of the right of freedom of speech and freedom of press. There was not one utterance, either in print, or in speeches, or otherwise, made or done for the purpose and with the intent of violating, or evading, in any manner, the preliminary injunction, or any other order, or decree in the Buck's Stove and Range Company case" (fols. 566-567).

Later Mr. Gompers gave this broad definition of the term boycott: "An agreement between two or more persons not to bestow patronage" (fol. 595).

Mr. Mitchell testified that he

"did not at any time make any speech or writing or publish any statement or talk on any occasion after the order of the court was made, with the intent of effecting that boycott or aiding or assisting or abetting or encouraging" (fol. 644).

He further testified that his understanding of the injunction was and is that they were enjoined from speaking of the Buck's Stove & Range Co., or to its employees, as a means of furthering the boycott; that the purpose of the injunction was not to deny the witness the right to say "Buck's

Stove & Range Co.," or to say "dispute," but to restrain him from furthering the boycott. And at no time that he referred to the company was it for the purpose of furthering the boycott (fol. 647).

And Mr. Morrison testified that he obeyed the injunction so far as it prohibited the prosecution of a boycott (fols. 863, 870), and that he was not guilty of the violation of the injunction in so far as aiding or abetting a boycott against the Buck's Stove & Range Company was concerned (fol. 890).

There can be no question but that these general denials by each of the defendants under oath, of any intent to commit a contempt of court by violating the provisions of the injunction against a boycott are complete and sufficient to call for the application of the rule permitting the purging of contempt by the defendant in a prosecution for criminal contempt.

Not only have the defendants made these general denials, but they have made specific denials and disclaimers, as will appear later, in regard to practically every act and utterance of which they are accused.

FACTS INDICATING ABSENCE OF WRONGFUL INTENT.

Before undertaking to show the ambiguous character of the acts and utterances of the defendants which are relied upon to sustain their conviction for contempt, it is desirable to call the attention of the court to certain circumstances and conditions which, as the evidence shows, existed at the time of these acts and utterances, and which will show that the defendants could not have intended to foster a boycott.

DISCONTINUANCE OF BOYCOTT.

That the acts and utterances of the defendants which are relied upon to convict them of contempt were not intended

to continue and further the boycott which had been enjoined seems to be conclusively established by the fact that the boycott had been discontinued when the decree went into effect, and before the time when the defendants sent out their circulars, wrote and published their editorials, made and published their reports, and delivered their addresses. Since, as will presently be shown, there was no boycott in existence at the time of these acts and utterances, none of these things could have been done for the purpose of continuing a boycott.

It appears by the uncontradicted testimony of Mr. Gompers and Mr. Morrison that, while the American Federation of Labor maintained boycotts in the earlier years of its existence, this had been discontinued some years before 1907 (fols. 594-595). At that time, and for some years before, the Federation did not engage in boycotting; it never initiated a boycott, and it was thought to be beyond its power to do so (fols. 805, 875). But when an application was made to the Federation by a union to have a particular employer considered unfair toward labor, the annual convention would refer the matter to the Executive Council for investigation as to the cause and justice of the complaint and to make an effort to adjust the difference between the employer and employees. If the effort to secure an adjustment failed because of the unfairness of the employer, the Executive Council published in the *Federationist* a notice to organized labor stating that an effort had been made to adjust the controversy, without success, and that the application of the union to have the employer regarded as unfair had been approved by the Executive Council, and in the same, or in the succeeding issue of the *Federationist* the name of the employer was placed in the "We Don't Patronize" list (fols. 594-595, 805-806, 962). Beyond this, Mr. Morrison testified, the American Federation of Labor did not further boycotts at any time (fol. 962).

In the case of the Buck's Stove and Range Company

nothing more was done than publish in the *Federationist* a notice that the company was unfair, placing the name of the company on the list, and sending out the circular letter dated November 26, 1907 (fols. 806, 919-920).

The circular letter, dated November 26, 1907, and sent out nearly a month before the temporary injunction became effective (fol. 908), in accordance with resolution 49, providing for a "campaign of education" which had been adopted by the convention of the American Federation of Labor held in November, 1907, at Norfolk (fols. 335-337, 583, 586, 848-849, 854, 908-909), was one of the circulars issued in matters of that kind, and consisted of a statement of facts and of rights for the information of organized labor (fols. 862, 908-909, 919).

A reference to this letter, which is partially reproduced in the record (fols. 405-406, pp. 285-286; fol. 909) shows that, as Mr. Morrison testified in effect (fol. 918), it contained nothing advocating a boycott of any kind.

Immediately after the temporary restraining order became effective on December 23, 1907, the defendant Gompers struck the name of the Buck's Stove and Range Company from the "We Don't Patronize" list and took steps to insure its exclusion from the list in future issues of the *Federationist* (fols. 493, 586); and the name of the company did not thereafter appear in the list (fols. 472, 474, 485-486, 587, 825). He had every employee of the office of the American Federation of Labor assembled, and, in a short talk, informed them of the going into effect of the injunction, and warned them against sending out any copy of the *American Federationist* or any other document containing the name of the Buck's Stove and Range Company.

The fact that these instructions were given is established by the testimony of Mr. Gompers (fols. 494-495, 576) and by the testimony of at least five witnesses for the defendants (fols. 471, 473, 474, 484, 475-476, 477-478, 478-481, 481-482, 484-485). This testimony is not contradicted; on

the contrary it is confirmed by a witness for the prosecution (fols. 314-315).

Mr. Gompers testified, and his testimony is uncontradicted, that while the circular letter of November 26 was issued pursuant to resolution 49 relating to a "campaign of education," nothing was done under that resolution after December 23, 1907, when the injunction became operative (fol. 585); the report upon the resolution and its adoption by the convention was all in advance of the injunction issued by Justice Gould, and was never carried out after the injunction went into effect (fol. 605); there was not time between the close of the convention and the issuing of the injunction and its taking effect to conduct any sort of a campaign, and whatever campaign, if any, was conducted, ceased immediately upon the order of the court becoming effective (fols. 505-506). Mr. Morrison testified that he did "not know of anything done, which might be regarded as of a boycotting tendency, between the sending out of the circular of November 26 and the injunction of December 23, 1907" (fol. 919).

Each of the defendants testified that, so far as the American Federation of Labor and its officers, including the defendants, were concerned, the boycott ended when the temporary injunction became effective.

Mr. Gompers testified that the boycott against the Buck's Stove & Range Company by the American Federation of Labor, or any of its officers, including himself, ended the moment the injunction became effective on December 23, 1907 (fols. 493-501), and by boycott he meant the withholding of patronage (fol. 587). Later Mr. Gompers defined a boycott to be "an agreement of two or more persons not to bestow patronage" (fol. 595). Testimony to the same general effect was given by Mr. Morrison (fols. 861, 863, 870, 875, 885-886½, 907, 919, 957), and by Mr. Mitchell (fols. 646, 714, 753, 754, 757).

This testimony is absolutely uncontradicted.

And more than this, there is no evidence—nothing that can properly be considered to be evidence—that a boycott was prosecuted after that time by anyone else. There is no evidence that a single individual, firm or company was even persuaded, much less coerced, to withhold patronage from the Buck's Stove & Range Company. There is no evidence that the company suffered any loss of profits because of a boycott, or, for that matter, from any other cause, for no loss of profits is shown.

The failure of the attorneys for the prosecution to produce evidence of the existence of a boycott after December 23, 1907, is evidently because they could not, for they have tried to do so.

But the most they could do was to put in evidence a resolution, adopted by a convention of the United Mine Workers of America, one month and two days after the preliminary decree, providing that any member of that organization purchasing a stove made by the Buck's Company should be fined five dollars (fol. 670), and certain articles in some of the labor journals and in the United Mine Workers' Journal, which seem to have been published for the purpose of furthering some sort of a boycott, although not necessarily the kind of boycott of which the law takes cognizance (fols. 753-754, 759-761, 763-766).

As for the Mine Workers' resolution, while it provides for a coercive restraint of patronage, there is no evidence that any action was ever taken under it. And as to the publications in the labor press they could not have any coercive effect upon any one, and there is no evidence that they exercised any influence at all.

None of the defendants; not even Mr. Mitchell, had any knowledge of these publications (fols. 753-754, 761, 763-766, 907), and therefore could not conclude from them that there was a boycott in existence which might be furthered by themselves or by any other representative of the American Federation of Labor.

In the majority opinion of the Court of Appeals it is said that, if the boycott did not continue after the injunction became effective, it was not the fault of the respondents; they furnished the material to keep the machinery in operation (p. 759).

If Mr. Gompers, president of the American Federation of Labor, Mr. Mitchell, its vice-president, and Mr. Morrison, its secretary, all members of the Executive Council, had intended to continue the boycott in force, there can be no question at all, considering the power and influence with which their offices invested them, but that they could have found effective means of continuing the boycott in force. And if, on the other hand, they did not possess the power to do so, it is altogether improbable that men of their intelligence, experience and ability, burdened with their manifold and important duties, would engage in a vain attempt to effect that which they would know they could not accomplish. Either way one looks at it the fact remains that the non-existence of a boycott after the injunction became effective on December 23, 1907, is convincing proof that the defendants had no intention of keeping alive the boycott which had been enjoined.

The Court of Appeals also says that the result of what the defendants did might be presumed (p. 759). This cannot be the law even in the connection in which the learned court made the statement. It surely cannot be permitted to presume a fact necessary to show a wrongful intent, either for the purpose of establishing the criminal intent which is essential to the conviction of the defendants for criminal contempt or for the purpose of depriving them of the benefit of the rule as to purgation.

CONDITIONS CONFRONTING THE DEFENDANTS.

The contention of the defendants that they did not intend by their acts and utterances to further a boycott in violation of the injunction does not rest solely upon the fact that

there was no boycott in existence to be advanced. It is possible to go further and to show that they had entirely different, and wholly legitimate, objects in view.

To show this it becomes necessary to give an account of certain circumstances and conditions which, as the evidence shows, existed at the time of the defendants' acts and utterances and which will throw a light upon, and explain, their true object and purpose and invest them with a meaning which they would not otherwise have.

Existence of Organized Attempt to Destroy Labor Organizations.—In determining the real object and purpose of the acts and utterances of the defendants, we should not for a moment lose sight of the fact that, from the time of the very first to the time of the very last of these acts and utterances, the defendants were confronted with a formidable attempt to wrest from them and from every representative of labor their inalienable and constitutional rights of free speech and free press, an attempt which, if successful, would not only embarrass organized labor, but render the organizations ineffective and possibly result in their utter destruction.

The work of thus striking labor dumb was entrusted to the attorneys who made the reports to the court, which form the basis of the proceedings at bar, two of whom have been very active in the conduct of the prosecution. These gentlemen, while acting as the attorneys of record for the Buck's Stove & Range Company, were really in the employ of, and were paid for their services by, the American Anti-Boycott Association (fols. 39, 52-56).

They commenced their task by filing a bill in equity by the Buck's Stove & Range Company against the American Federation of Labor, these defendants, and others. The suit was begun about August 19, 1907 (fols. 826-827), and the defendants were then informed, by the prayer for relief contained in the bill, of the extraordinary and unprecedented provisions of the decree which was sought.

That the defendants were then alive to the full meaning of the suit, and of its vast potential effect to injure and help to destroy organizations of labor, is manifested by certain statements made by Mr. Gompers between the time of the commencement of the suit and the issuing of the injunction.

In a speech delivered at the Jamestown Exposition on the 5th day of September, 1907, Mr. Gompers said (fols. 404-405):

"An injunction is now being sought from the Supreme Court of the District of Columbia against myself and colleagues of the Executive Council of the American Federation of Labor. It seeks to enjoin us from doing perfectly lawful acts; to deprive us of our lawful and constitutional rights. So far as I am concerned, let me say that never have I nor ever will I, violate a law. I desire it to be clearly understood that when any court undertakes without warrant of law by the injunction process to deprive me of my personal rights and my personal liberty guaranteed by the Constitution, I shall have no hesitancy in asserting and exercising those rights."

Editorial comments to a similar effect are to be found in the October, 1907, *Federationist* (fol. 405, p. 284), in a report of the Executive Council of the American Federation of Labor to the Norfolk convention, which adjourned about a month before the injunction issued (fols. 382, 955, 839), and in President Gompers' report to that convention (fols. 383-384).

The suit by the Buck's Stove & Range Company revealed to the representatives of labor and to the defendants the character of the attack which was to be made upon organized labor by means of litigation. And they knew, because of the connections of the attorneys employed, that they were confronted with much more than that which appeared on the surface. They knew that back of this suit was the nation-wide power of the American Anti-Boycott Association.

They knew that Mr. Van Cleve, who was president of the Buck's Stove & Range Company, was then president of the National Manufacturers Association, which was bitterly antagonistic to the labor movement (fols. 955-956), and that, therefore, they had reason to believe that both of these national associations were back of the suit with large financial resources and means of giving extended publicity to anything adverse to organized labor, which might tend to shake the confidence of labor and of employers in the power of organizations of labor and of the public generally in the legitimacy of the exercise of that power.

All these things should be borne in mind in determining the true object and purpose of the acts and utterances of the defendants before the injunction issued, which are relied upon by the prosecution to show a criminal intent.

Suit by Buck's Company Made a Test Case.—The situation thus confronting organized labor was not altogether new; it merely differed from what had gone before in the power and character of the attack. Before the suit by the Buck's Stove & Range Company injunctions had not only been sought, but, in some cases, actually issued by the courts, which, from the viewpoint of labor, unduly interfered with the effective exercise by labor organizations and their representatives of functions which were deemed to be legitimate and to be necessary to the proper protection of the workers and their just claims, and which even deprived them of their rights as citizens.

In the course of his testimony the defendant Mitchell mentioned instances of what he regarded as such decisions (fol. 645), and the defendant Gompers testified generally to the same effect (fols. 487, 488).

Without insisting that these defendants were justified in complaining of the particular injunction decrees to which they referred, there can be no question but that injunctions have at times been issued by the lower courts of which labor

has had just cause to complain. It is only necessary to mention the decree issued by Judge Jenkins, of the Eastern District of Wisconsin, in the case of *Farmers' Loan & Trust Co. vs. Northern Pac. Co.*, 60 Fed., 803, enjoining the employees of a receiver of a railroad from leaving the employ of the receiver for a certain time. This order was reversed by the Circuit Court of Appeals in *Arthur vs. Oakes*, 63 Fed., 310, wherein Mr. Justice Harlan, in delivering the opinion, employed this language (pp. 317, 318):

"It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. One who is placed under such constraint is in a condition of involuntary servitude—a condition which the supreme law of the land declares shall not exist within the United States, or in any place subject to their jurisdiction."

So strongly had organized labor been impressed with the importance of testing the validity of the injunctions which were deemed to invade constitutional rights, that, about two years before the suit by the Buck's Stove & Range Company was commenced, steps had been taken by the American Federation of Labor to find a suitable case in which the test could be made.

A resolution to this effect was adopted by the November, 1905, convention (fol. 489) and a search for a suitable case was commenced (fols. 490-492), but it was not until the suit by the Buck's Stove & Range Company was brought that it was believed that the case sought for had been found.

That seemed to be just the kind of a case which the representatives of the Federation wanted for the purpose of making the proposed test (fols. 510-511, 603), and steps were promptly taken to contest the case to the end, even to carry it up to the Supreme Court of the United States if necessary (fols. 492, 829-835, 836-841, 843-845, 949-950, 954-955).

Measures to Provide a Defense Fund.—Funds were needed to contest this suit, for the revenues of the American Federation of Labor were insufficient for the purpose. This was called to the attention of the convention of the Federation held at Norfolk, Virginia, in November, 1907, by the Executive Council (fols. 840, 955, at p. 713), and the Council was authorized to levy a special assessment of one cent per capita and to make such further assessments as in their judgment should seem necessary (fols. 492, 845, 949).

The Council accordingly levied an assessment of one per cent per member of each affiliated organization to provide a fund for the defense of labor in the pending suit, and announced the levy in a circular dated November 29, 1907, which was sent out to the secretaries of the international and local unions (fols. 493, 957, 966), and also printed in the January, 1908, *Federationist* (fols. 957, 966).

Three weeks after the date of this circular, or the 18th of December, 1907, the temporary injunction in the suit by the Buck's Stove & Range Company was issued.

The situation which then confronted organized labor was not only serious, but to some extent unexpected. That the complainant in that suit was seeking a decree of a most extraordinary and unprecedented character was, as has been shown, fully appreciated by the representatives of labor. But neither they nor their attorneys had expected that the decree would contain the extreme provisions suggested by the prayer for relief. They had naturally assumed that the real issue which would be decided by the court would be the extent to which a court of equity might properly go in enjoining a boycott—the kind of boycott which might be enjoined. Hence, as Mr. Gompers testified, "the order, in so far as it attempted, or seemed to attempt, to restrain free speech or free press, was a very great surprise" (fol. 493). It can readily be imagined that the effect of the issuing of this extraordinary decree was to arouse labor organizations and their representatives to greater activity and to a more deter-

mined effort in the defense of the more than constitutional—the inherent and inalienable—rights which are the heritage of the workers in common with every citizen.

Immediately after the temporary restraining order became effective, which was on December 23, 1907, Mr. Gompers communicated with the members of the Executive Council (fol. 493), and in January, 1908, the Executive Council met again, and the sum realized from the one cent assessment being deemed insufficient for the exigencies of the situation confronting labor, decided to issue an appeal for voluntary contributions. This was done by issuing the paper designated "An Urgent Appeal for Financial Aid in Defense of Free Speech and Free Press," which will be commented upon later.

Endeavor to Obtain Legislation.—By the decree in the Buck's Stove & Range Company's suit a new impetus was given to the efforts of organized labor to obtain from Congress legislation of a remedial and reformatory character which would secure to labor the rights which had been denied by what were deemed to be erroneous decisions of the courts.

A "Conference of Protest," consisting of representatives of organizations of labor and of farmers, was convened at Washington, and this conference issued a document entitled "Labor's Protest to Congress," and dated Washington, D. C., March 19, 1908, and also an "Address to Workers, Issued by Labor's Conference of Protest." The "Protest to Congress" was presented by the entire conference to the President of the United States, to the Vice-President, as President of the Senate, and to the Speaker of the House of Representatives, and was discussed with each of them (fols. 563-564).

In the document "Labor's Protest to Congress," the text of which is in the record (fols. 777-784), the decisions of the courts which labor regards as wrong and unjust are

referred to and attention is directed to the law enacted by the Parliament of Great Britain in December, 1906, known as the trades dispute act, and remedial legislation is suggested to, and urged upon, Congress.

In the "Address to Workers," the text of which is also in the record (fols. 785-788), the suggestion is made that mass-meetings should be held throughout the United States, which should adopt resolutions urging upon Congress the enactment of remedial legislation, and provide for the forwarding of these resolutions to United States senators and congressmen.

Copies of "Labors' Protest to Congress" and of the "Address to Workers" having been sent to all the local unions, a letter dated April 16, 1908, enclosing a form of resolutions, both of which are in the record (fols. 773-776, 789-793), was sent to the secretaries of all local unions (fols. 773, 872-873) for the purpose of having the resolutions adopted and forwarded to senators and representatives to further the reforms urged in the two documents referred to above.

Further evidence of the efforts of organized labor to obtain legislation is to be found in the report of President Gompers to the Executive Council, dated September 9, 1908. This report contains a letter by Mr. Gompers to the president of the Legislative Committee calling attention to the many resolutions adopted by the Denver convention relating to laws which should be urged upon Congress, among them being a resolution directing that "efforts be continued to secure the passage of the bill introduced at the last session of Congress by Congressman Wilson to amend the Sherman Anti-Trust Law" and a resolution directing that "effort should be continued to secure the passage of our anti-injunction bill, commonly known as the Pearre bill" (fols. 542-543).

Grievances of Labor Made Political Issues.—Along with the increased activity of organized labor to have the laws

which it favored enacted by Congress, a more active effort was put forth to have labor questions made issues in political campaigns and the subject of public discussion as a means of correcting the wrongs and abuses of which men of labor and their sympathizers had been complaining for many years.

Certain proposed planks for the Republican platforms of 1908 were formulated by the members of the Executive Council and their adoption urged upon the Republican convention at Chicago (fol. 523). These proposed planks, as may be seen from the text (fols. 523-524), would have pledged the Republican party to amendments of laws against combinations in restraint of trade and the laws governing the issuing of injunctions in labor disputes.

But they were rejected by the Republican convention and quite different planks adopted (fols. 424-425).

Later they were presented to the Democratic convention at Denver (fols. 525-527), and were, in substance, though not literally, incorporated in the Democratic platform of 1908 (fols. 527-528).

The defendants in the cases at bar entered into the campaign of 1908 actively, making many public addresses for the purpose of inducing the workers and those who were in sympathy with labor to give their support to the political party which had given to the claims of labor satisfactory recognition.

All this has a very important bearing upon the question as to the object and purpose of many of the acts and utterances of the defendants which have been adduced in these cases as evidence of an intention by the defendants to violate the injunction issued in the suit of the Buck's Stove & Range Company by furthering, or attempting to further, a boycott against that company. For it will be found that a very large number of the utterances which are relied upon to show an intention to violate the injunction are, in fact, but single sentences from public speeches, some of which took an hour or an hour and a half to deliver, and which were

made for the sole purpose of urging the support of the party which had accorded to labor the most satisfactory reception in the national conventions of that year.

AMBIGUOUS CHARACTER OF ACTS AND UTTERANCES OF DEFENDANTS.

Having now considered the conditions which existed, and the circumstances in which organized labor and these defendants, as the representatives of organized labor, were placed at the time of the acts and utterances which are charged to violate those provisions of the injunction in the suit of the Buck's Stove & Range Company which are directed against the prosecution of a boycott, we are now in a position to examine in detail the specific charges against the defendants for the purpose of determining whether, if it cannot be said that there was neither any violation of, nor any intention to violate, these provisions of the decree, it is not at least so questionable whether there was any such criminal intent that the rule as to purgation may properly be invoked and applied.

In doing this the order in which the various acts and utterances are charged in the reports of the committee will not be followed, but they will be grouped as convenience of treatment seems to dictate.

CHARGE AGAINST EACH AND ALL OF THE DEFENDANTS.

First will be considered the charges common to all of the defendants, which are three in number, as follows: (1) Publishing the paper designated as "Urgent Appeal;" (2) publishing the editorial known as "A Review and Protest," and (3) publishing the editorial prefixed to the copy of the injunction decree printed in the *Federationist*.

Publishing the "Urgent Appeal."—Each of the defendants is charged with violating the provisions against a boycott by publishing a paper designated by them as "An Urgent Appeal for Financial Aid in Defense of Free Speech and Free Press." See paragraph V of the charges against defendant Gompers (fols. 15-16), paragraph I of the charges against defendant Mitchell (fol. 176), and paragraph II of the charges against defendant Morrison (fols. 242-247).

Only part of this appeal for funds is incorporated in these respective charges, but the full text is in the record (fols. 386-387).

A perusal of the "Appeal" in its entirety will, it is believed, produce the conviction that it was not sent out for the purpose of furthering a boycott, but that it is, what it purports to be, an appeal for voluntary contributions of money for the purpose of defending and maintaining the rights of labor. True, it contains a reference to the Buck's Stove & Range Company and to the hostility of the company to labor, but that this reference was intended to further any boycott is not apparent upon the face of the appeal, and there is no evidence in the record showing, or tending to show, that this was its ulterior purpose. That this reference to the controversy with the Buck's Company should be contained in the appeal was inevitable, for it was necessary to explain the purposes for which the funds were needed and would be used.

Mr. Gompers testified, in effect, that the purpose of circulating the "Urgent Appeal" was to raise money needed to defend the equity suit and to obtain remedial legislation (fols. 496-497, 599), and that the reference therein to the controversy between the Federation and the Stove Company was to explain the situation to possible contributors (fol. 609).

There is similar testimony by both Mr. Morrison (fols. 801-802, 819-820, 867, 869, 892, 911-913) and Mr. Mitchell (fol. 716).

The appeal was submitted to counsel in advance of publication, who advised that it could legally be issued (fols. 497, 801, 819, 820, 865, 892).

On the cross-examination of the defendants they were asked why an appeal for voluntary contributions was issued instead of levying assessments in pursuance of the authority conferred upon the executive council by the Norfolk convention. They explained, in effect, that there were only two processes by which funds could be raised in the American Federation of Labor in addition to the regular income—one by levying an assessment, which would necessitate the expulsion of a union failing to pay, and the other by issuing an appeal for voluntary contributions. To levy the assessment makes it obligatory on all organizations to pay or they are suspended from membership, and many of them are not so able to pay as others. The appeal is responded to by those most able to pay and imposes no burden on those less able (fols. 495-496, 608, 716).

That the "Urgent Appeal" could not have been intended to further a boycott is made certain by the obvious fact that it would be a very ineffective instrument for that purpose. There is no evidence that it had any such effect at all, but there is evidence that it was very effective in carrying out the declared purpose of obtaining a defense fund, for the responses were liberal; in the year 1908 alone more than \$15,000 was received (fols. 963-964).

The defendant Mitchell had nothing whatever to do with preparing or circulating this appeal, and had no knowledge of it until it had been published (fols. 567-568, 572, 636, 637, 665, 702, 703, 714, 820).

Publishing Editorial "A Review and Protest."—The charge of printing and publishing an editorial entitled "Free Speech, Free Press, Invaded by Injunction against A. F. L.—A Review and Protest," which will hereafter be referred to by the shorter title of "A Review and Protest," is contained in

paragraphs III and V of the charges against the defendant Gompers (fols. 9-13, 16), in paragraph I of the charges against the defendant Mitchell (fols. 177-180), and in paragraph II of the charges against the defendant Morrison (fols. 243-247).

The full text of this editorial is in the record (fols. 388-395). Reading it as a whole, it will be seen that the editorial is merely a discussion of the effect of the injunction issued in the suit by the Buck's Stove & Range Company, its invasion of the liberty of the press and the right of free speech, and the meaning of this invasion of these fundamental rights not only to labor, but to the citizen in every walk of life.

The injunction issued is criticised, but in this criticism those who are responsible for the publication of the editorial were well within their rights. And, while the injunction was justly open to very severe criticism, the criticism which this editorial offers is couched in temperate and respectful language. "There is," it is said, "no disrespect to the judge or the court when we state with solemn conviction that we believe this injunction to be unwarranted," a conviction which was later justified by the action of the Court of Appeals in modifying the provisions of the decree.

A reading of the editorial in its entirety will, it is believed, convince the impartial reader that the editorial was published only for the purpose of making clear the rights for which labor had long been contending, and which, as the defendants and their attorneys believed, had been denied by this injunction, and to show the necessity of a rally by labor in the lawful defense of these rights. Both Mr. Gompers and Mr. Morrison testified that this was the purpose of the editorial, and each squarely denied that it was circulated for the purpose of furthering an alleged boycott (fols. 496, 497, 599, 802, 866).

Legal advice was taken upon the editorial as well as upon the "Urgent Appeal," and the defendants were advised that they had a perfect right to publish the editorial and issue it as well as the appeal (fols. 497, 597).

Mr. Mitchell had absolutely nothing to do with preparing or circulating this editorial (fols. 567-568, 636).

Publishing Editorial Prefixed to Copy of Injunction Decree.—The charge of printing and circulating an editorial prefixed to a copy of the decree of injunction is contained in paragraphs IV and V of the charges against the defendant Gompers (fols. 14-16), in paragraph III of the charges against the defendant Morrison (fols. 247-248), and in paragraph II of the charges against the defendant Mitchell (fols. 171-182).

The statement in this editorial paragraph was based upon an opinion by Mr. Davenport (counsel for the prosecution in these cases and formerly of counsel for the complainant in the suit by the Buck's Stove & Range Company by virtue of his employment by the American Anti-Boycott Association), furnished by him to, or, at least, printed by, the National Association of Manufacturers in its official organ, *American Industries*. The statement is not a verbatim reprint of this opinion of counsel, but an attempt by a layman to restate its substance briefly in his own language.

Mr. Gompers testified that he did not publish the statement with the intent of aiding, assisting or abetting an alleged boycott against the Buck's Stove & Range Company, but as an interesting piece of news which he saw over the name of the counsel for the National Association of Manufacturers or the Anti-Boycott Association. He did not know which it was, or whether both. He saw this statement in the official journal of the Manufacturers' Association, and he wrote this account of it, and submitted both to his attorneys, and his attorneys stated that his statement was correct, and his statement in his own language was a correct construction of the court's order (fols. 539-540). The statement was printed as a piece of news and as a filler (fol. 599), and at the time he wrote it he intended it to be, and at the time of writing the statement he thought it was, a

fair construction of Mr. Davenport's language upon which it was based (fols. 600-601).

Mr. Morrison's testimony is to the same general effect (fol. 803).

Mr. Mitchell's uncontradicted testimony is that he had nothing to do with this editorial and knew nothing of it (fol. 636).

CHARGES AGAINST BOTH DEFENDANTS GOMPERS AND MORRISON.

In the reports of the committee certain of the charges are brought against both the defendant Gompers and the defendant Morrison, but not against the defendant Mitchell. These will next be considered.

Circulating January, 1908, Federationist After December 23, 1907.—The allegations that they circulated the January, 1908, number of the *American Federationist*, containing the name of the Buck's Stove & Range Company in the "We Don't Patronize" or "Unfair" list, after the filing of the injunction undertaking are contained in paragraph II of the charges against the defendant Gompers (fol. 7) and in paragraph IV of the charges against the defendant Morrison (fol. 248).

These charges relate to the disposal of 37 copies of this number of the *American Federationist* after December 23, 1907, when the injunction became effective by the filing of a bond.

While Mr. Gompers was editor of the *Federationist* and exercised a general supervision over the policy and contents of the magazine, there is nothing in the record to show that he caused any copies of this number of the magazine to be circulated after December 23, 1907, or that he knew of such circulation. And so far as any copies were sent out by employees, it was in violation of Mr. Gompers' express instructions described above.

This charge is, therefore, more particularly applicable to the defendant Morrison.

Mr. Morrison testified at length as to the measure which he took to prevent copies of the January, 1908, *Federationist* from being circulated (fols. 803-804, 852-853, 875), and from this testimony, which is not only uncontradicted, but corroborated (fol. 472), it is evident that he made every reasonable effort to prevent copies of this number of the *Federationist* from being sent out.

It is clear from the record that these 37 copies were sent out, in response to requests from libraries, newspapers, students, and lawyers, by subordinate employees in the office of the *Federationist*. Mr. Morrison discovered this when, at Mr. Davenport's request for information, he had the copies which had been put away counted. He then learned, for the first time, that 37 copies had been disposed of in this matter, and he furnished this information, with the name and addresses of the purchasers, to Mr. Davenport at the hearing in the former contempt proceedings (fols. 803-804, 864). The prosecution did not put in evidence the list of the names and addresses of the purchasers which had been furnished to Mr. Davenport.

Surely no intention to violate the injunction by furthering a boycott can be deduced from these facts, even had Mr. Morrison participated in the sending out of these copies.

It further appears from the testimony of Mr. Morrison that, while he was not at first conscious of having taken any part in the circulating of the January, 1908, *Federationist*, he found that he had sent one copy to Vancouver, B. C., in response to a request. The letter requesting the copy and the letter transmitting it by Mr. Morrison are both in the record and show clearly that it was not sent out in furtherance of a boycott, but for a wholly different purpose. Mr. Morrison read the letters into the record, so that the court could see that there was no idea of furthering a boycott (fols. 806-808).

Circulating Reports of Proceedings of Norfolk Convention.—In paragraph III of the charges against the defendant Gompers (fols. 8-13) and in paragraph I of the charges against the defendant Morrison (fols. 240-242), it is charged that these defendants circulated copies of the printed proceedings of the convention of the American Federation of Labor held at Norfolk, Virginia, in the month of November, 1907, containing references to the Buck's Stove & Range Company in connection with the "We Don't Patronize" or "Unfair" list, a report by President Gompers to that convention, the editorial entitled "A Review and Protest," which has been considered above, and a resolution adopted by the convention relating to a "campaign of education," which will be considered when we come to the charges against the defendant Morrison alone.

In approaching the consideration of the question, if there is a question, whether these printed reports were circulated with the intent and for the purpose of fostering the alleged boycott which had been enjoined, the very first thing to be noted and remembered is that it had, of course, long been the practice of this great organization, the American Federation of Labor, to publish printed official reports of its annual conventions. This the record shows, and there is no claim made that the publishing of the proceedings of the Norfolk Convention was anything unusual.

Since then the fact of the publication of these proceedings is not, of itself, evidence of an attempt to further a boycott, we must look for some special circumstances connected with their printing and distribution which tend to show that their publication was for the purpose of furthering a boycott, and not merely for the customary purpose of making available for future reference an authentic record of the proceedings of the convention.

But there are no special circumstances or features (with a possible exception which will presently be considered) connected with the printing of these reports of the proceedings of this convention. About the usual number of copies were

printed (Fols. 801, 816-817), as usual all the copies printed were not distributed (fols. 369, 801), in the distribution of these copies there were no special instructions but the usual practice was followed (fols. 309, 313, 371), and they were supplied, as had been customary, to officers of the Federation and the secretaries of affiliated unions, to the labor press, to various organizations which had standing orders for copies, to librarians, to any one who wishes to buy copies at 25 cents each (fols. 386, 584, 801, 816, 966), and to delegates at the succeeding annual convention (fols. 801, 822).

Surely there is here no indication of any intention to further a boycott by circulating copies of these reports.

The possible exception to the usual practice in distributing reports of convention proceedings is this: A number of copies of the reports of the proceedings of the Norfolk convention, by Mr. Morrison's directions, were bound in leather and one of these bound copies was sent to each of the following persons and bodies: Theodore Roosevelt, President of the United States; Oscar S. Straus, Charles P. Neill, Committee on Labor, House of Representatives; Senate Committee on Education and Labor, Judiciary Committee, House of Representatives; Judiciary Committee, U. S. Senate; Parliamentary Committee, British Trade Union Congress; Library of Congress (fols. 328-329, 580, 584, 817).

If the learned counsel for the prosecution choose to contend that this was done with the intent and purpose of furthering a boycott, or that it violated those provisions of the decree which enjoin a boycott, they are welcome to do so and the only answer which their contention will receive is this invitation to make their contention.

Yet another fact which stands in the way of the acceptance of the theory of the prosecution that these proceedings were circulated to further a boycott is the fact the proceedings, because of the large number of subjects recorded therein (from 200 to 300), their bulk (371 pages), and the expense of circulating copies, were but poorly adapted to the encouragement of a boycott (fol. 918).

Both of these defendants disavowed any intention of violating the injunction by circulating these reports.

Mr. Morrison, whose duty it was, as secretary of the convention, to distribute the reports, said that the distribution works automatically and that, in discharging his duties as secretary in the distribution of these reports, it did not at any time occur to him that he was perhaps violating the injunction of the court, or that there would be doubt as to his right to do so in view of the terms of the injunction (fols. 801, 820).

Mr. Gompers, whose only connection with these printed reports of the proceedings of the Norfolk convention was that he signed warrants in connection with payments for printing, binding, and postage (fols. 579-580), testified that he did not regard these printed proceedings as being involved in the injunction (fols. 580, 605, 606).

This testimony refers to Mr. Gompers' understanding of the injunction before the bringing of the former proceeding to punish him for contempt. When that proceeding was commenced Mr. Gompers, along with a great many other benighted persons, gained a fuller knowledge of the true import of the injunction, as it was interpreted by counsel for the complainant in that proceeding who are now counsel for the prosecution in these proceedings. So Mr. Gompers, in a report to the Executive Council dated September 9, 1908, which was nearly two months after the rule to show cause had been served upon the defendants Gompers and Morrison in the former contempt proceeding, used the following language: "Your attention is especially called to a feature of the case of this injunction. If all the provisions of the injunction are to be fully carried out, we shall not only be prohibited from giving or selling a copy of the proceedings of the Norfolk convention of the A. F. of L., either a bound or unbound copy; or any copy of the *American Federationist* for the greater part of 1907, and part of 1908, either bound or unbound, but we, as an E. C., will not be permitted to make a report upon this subject

to the Denver Convention" (fols. 606-608). That Mr. Gompers' larger knowledge of the import of the injunction, so ably interpreted, was gained from the petition in the former contempt proceeding appears by language used in this report, which is given more at length in connection with the testimony of Mr. Morrison, as follows (fol. 821): "The petition upon which the Buck's Stove & Range Co. ask for our punishment was published in the September issue of the *Federationist*, and I suggest it be read in connection herewith, as it will show to what extent the E. C. and officers and members of the affiliated organizations and all others are enjoined and what they are enjoined from doing."

Statements as to Right to Refrain from Buying Buck's Stoves and Ranges.—In paragraphs VI (fol. 17), VII (fols. 17-18), VIII (fols. 18-19), IX (fol. 19), X (fols. 19-20), and XIV (fols. 23-24) of the charges against the defendant Gompers he is charged with writing and publishing editorials and making public addresses to the effect that there is no law and no court decision compelling any one to buy a Buck's stove or range or Loewe hat.

And in paragraph IV of the charges against the defendant Morrison he is charged with circulating certain copies of the *American Federationist* which contain some of these statements (fols. 248-249). These charges against the defendant Morrison are so indefinite that they fail to comply with the rule that a defendant in a criminal contempt proceeding is entitled to be informed of the nature and cause of the charge against him, but it may, for the present purpose, be assumed that the allegations are sufficient.

The uncontradicted testimony of Mr. Gompers and Mr. Morrison is that these statements did not have the furthering of a boycott for their object.

Mr. Gompers testified that they were not published for the purpose of aiding, assisting, or abetting an alleged boycott against the Buck's Stove & Range Company, but printed as

statements of fact, and to give the information to all who were interested in the proceedings before the court. The editorial "It should be borne in mind that there is no law, aye, not even a court decision, compelling union men, or their friends of labor, to buy a Buck's stove or range" was not published for the purpose of aiding a boycott. There was no longer a boycott of the company in existence. It was the statement of a legal fact as understood by a layman (fols. 513, 528, 566, 577). He did not understand that the injunction prohibited him from stating a fact of that character (fol. 610).

Mr. Morrison considered these statements to be simply the statements of a fact, and said that he does not know of any law compelling him to buy any article fair or unfair if he does not want to do so. They were not intended for the purpose of aiding or abetting a boycott (fols. 868-869, 875).

Not only are these utterances mere statements of an incontestible fact and of the law as it had been expressly declared by the Court of Appeals (*American Federation of Labor vs. Buck's Stove & Range Co.*, 33 App. D. C., 83), but, if these defendants are to be accorded the presumption of innocence which is due defendants in all criminal contempt cases, it cannot, in the circumstances of the cases at bar, be inferred that they had for their ulterior purpose the furtherance of a boycott, for, in the first place, so far as the evidence shows, there was no boycott in existence to be furthered, and, in the second place, the statements were but poorly adapted to furthering a boycott if there had been, in fact, a boycott in progress, so that it cannot reasonably be assumed that they were intended for that purpose.

The fair and the reasonable view is that the purpose of these statements of fact as to the effect of the injunction was to call attention to the grievances of which labor was complaining. A very natural and effective way of doing this would be to say, as in substance was said in these statements, that, while the courts have, by their abuse of the writ of in-

junction in labor disputes and in the Buck's stove case, gone far in denying to labor rights which are essential to its protection against the rapacity and greed of unfair employers, there is yet left to men of labor the right to bestow or to withhold their patronage as they may choose. This the defendants had a right to do. They had a right to criticise the granting of the injunction which had been issued against them. And they had a legitimate purpose in so doing, for they were striving for legislation by Congress to prevent the practices of which labor was complaining, and to this end it was important to spur the workers on to active co-operation and to arouse the interest and engage the sympathy of the general public by calling attention to the causes of complaint.

Criticism of the Abuse of the Writ of Injunction.—In paragraph XI (fol. 20) of the charges against the defendant Gompers he is accused of having published editorially in the September, 1908, *Federationist* comments upon the abuse of the writ of injunction within the year then past.

In paragraph IV of the charges against the defendant Morrison he is accused of having aided in circulating the September, 1908, among other numbers of the *Federationist* (fol. 248), but there is no specific reference to the language set forth in the charge against the defendant Gompers, so that the defendant Morrison was not informed of the accusation against him.

The language quoted in the charge against the defendant Gompers is an extract from a long editorial entitled "Some Reflections for Labor Day, 1908." A reference to the full text of this editorial, which is in the record (fols. 530-534), will show that, with the exception of the language set forth in the charge, it contains no reference to the Buck's Stove & Range Company and that it comments in general terms upon events in the world of labor during the past year. The language quoted in the charge is the only reference in all this

long editorial treating of many subjects which even remotely refer to the contest with the Buck's Stove & Range Company.

Little need be said as to this charge. Obviously the language quoted has nothing to do with the encouragement of boycott of any kind or description against any one. It is a criticism of certain acts by the courts, of the court which rendered the decree in the suit by the Buck's Company, and perhaps of the court which entertained the former contempt proceedings against these defendants.

It is believed that it is a just criticism, but, whether it was or was not justified by the facts, the making of it was entirely within the right of the defendants. The very purpose of the enactment of section 725 of the Revised Statutes (Judicial Code, sec. 268) was to prevent punishment for contempt because of utterances such as this.

Mr. Gompers testified that neither the editorial nor the paragraph which the committee had put in evidence was intended to aid, assist, or abet an alleged boycott against the Buck's Stove & Range Company, and that he had no such thought when he wrote it (fol. 535).

CHARGES AGAINST DEFENDANT GOMPERS ALONE.

Hastening Publication of January, 1908, Federationist.—The defendant Gompers is accused in paragraph I (fols. 5-7) of the charges against him of hastening the publication of the January, 1908, *Federationist*. As is shown elsewhere in this brief, this did not violate the injunction, which was not then in effect, so that there can be no question of wrongful intent.

Statement That He Would Not Buy a Buck's Stove and Range.—In paragraphs XIV (fols. 23-24) and XV (fols. 24-25) of the charges against him the defendant Gompers is accused of publicly making and publishing the statement that he would not buy a Buck's stove or range.

The comments which have been made in discussing the public utterances of Mr. Gompers to the effect that there is no law and no court decision compelling any one to buy a Buck's stove or range or a Loewe hat are applicable to these statements, and it will merely be pointed out here that Mr. Gompers has testified that they were not made for the purpose, or with the intent, of aiding a boycott against the Buck's Stove & Range Company (fols. 513-515, 627).

Insistence upon Right of Free Speech and Free Press.—Paragraphs XIII (fols. 22-23), XIV (fols. 23-24), XV (fols. 24-25), and XVI (fol. 26) of the charges against the defendant Gompers quote language by him asserting the right of free speech and free press and expressing a determination to continue to exercise these rights.

How it can be claimed that these utterances violate, or show an intention to violate, the provisions of the decree enjoining a boycott passes understanding. If they violate any of the provisions of the decree, they violate only the provisions which, as the defendants claim, themselves violate the constitutional guarantee of free speech and free press.

References to Controversy with Buck's Stove & Range Company.—In paragraphs VIII (fols. 18-19), X (fols. 19-20), XIII (fols. 22-23), XIV (fols. 23-24), and XV (fols. 24-25) the defendant Gompers seems to be accused of referring to the controversy with the Buck's Stove & Range Company in editorials and in public speeches.

The fact that these things were done to give encouragement to a boycott of some sort, though not a coercive boycott, might have the semblance of a foundation if we did not know the circumstances in which organized labor and the defendants, as the appointed representatives of labor, were placed at the time when the editorials were written and published and the speeches were made which contain these references. But when we know of the calls which had been

made, and were still being made, upon the workers to give their money in order to make it possible to maintain in the courts the claims which had been denied, and, it was believed, wrongfully denied, their organizations and their representatives, when we know of the efforts to enlist every member of organized labor and their every sympathizer in the attempt immediately to obtain remedial legislation by Congress through pressure brought to bear upon Congressmen and Senators, and when we know of the efforts to rally the workers and those who believed in the justice of their claims in support of the great political party which had promised most for the amelioration of the conditions of labor, the controversy with the Buck's Stove & Range Company becomes insignificant and seems but a petty squabble.

In the light of these circumstances, this controversy, once great but now become insignificant, could have had no place in the minds of these men who were addressing themselves to larger issues—defending and fighting to maintain the inherent and inalienable rights of free speech and free press which are guaranteed by our Constitution, but which are older than the Constitution, as old as civil liberty among English-speaking peoples.

Mr. Gompers testified at length that these were the purposes of his public speeches and editorials; that the references to the decree in the Buck's Stove & Range Company's suit and the decision in the Danbury hatters' case were merely to illustrate what he believed to be the wrongs of labor, and that they were not for the purpose of aiding or abetting a boycott against the Buck's Stove & Range Company or any other company (fols. 616-617, 622-624).

References to Impossibility of Complying with All the Terms of the Injunction.—Paragraphs XII (fol. 21) and XIII (fol. 23) of the charges against the defendant Gompers accuse him of publishing in the *Federationist*, and employing in a public address, language which seems to amount to

a declaration that he would not comply with all the terms of the injunction.

The language quoted in these charges does not indicate any intention or desire to violate the provisions of the decree enjoining a boycott; it has no relation to the matter of prosecuting a boycott against the Buck's Stove & Range Company, nor even to the general question of the right to maintain boycotts; it merely calls attention to the extreme length to which some of the provisions of the decree go in the denial of the right of assembly and public discussion, and expresses a determination to insist upon the rights guaranteed by the clause in the Constitution relating to the right of free speech.

What this defendant had in mind when he referred to the impossibility of complying with all the terms of the injunction is well stated in the editorial entitled "The Decision Reviewed," by Samuel Gompers, John Mitchell, and Frank Morrison (fols. 546-561), in the following words (fol. 558):

"Some carping critics have said, 'why not obey the terms of the injunction until the courts of last resort shall have rendered their decision?'

"We answer that such a course was absolutely impossible. It would have perverted and suppressed the lawful proceedings of a convention of the American Federation of Labor, a lawful gathering and body. It would have conceded the surrender of the principles of freedom of speech and of the press. It would have deprived the men of labor of the right of calling the wrong to the attention of the people, aye, it would have prevented the men of labor even from making an appeal to Congress or from giving the grounds or furnishing the arguments upon which they base their claims for congressional relief. It must be remembered that the defendants, their friends, sympathizers, agents and attorneys were enjoined from mentioning directly or indirectly, in printing, in writing or by word of mouth, the original grievance, the original contention, the injunction, or anything in connection therewith."

Statement "The Things I Have Been Charged With I Did."—Paragraph XV (fols. 24-26) of the charges against the defendant Gompers quotes from a public address containing the following language:

"The things I have been charged with, I did. I have not denied them. I have discussed them upon the platform as I discuss them here. I have written circulars about them."

Why this language should have been incorporated in the charges it is impossible to understand; it surely could not have been employed for the purpose of fostering a boycott.

But since it is in evidence, and may be relied upon as an admission, it may be well to point out that it is not, in the slightest degree, an admission of having done anything to further a boycott of any kind. It is only an admission that he made the speeches, wrote the editorials, and issued the circulars which were made the basis of the charges against him in the former contempt proceeding. It is not an admission that these things were done for the purpose of aiding a boycott, or that any of them did in fact violate the injunction by aiding a boycott.

The acts and utterances which Mr. Gompers had in mind when he said that "the things which I have been charged with I did" are summarized in a paragraph of an article published in the January, 1909, *Federationist* (fol. 501 *et seq.*), reading as follows (fol. 503, at p. 379):

"The allegations charging me with violating the terms of the injunction were that I did, or authorized, or directed to be done, these things: because by the authority of the convention and of the Executive Council I sent to our fellow-workers and friends an appeal for funds in order that we might be in a position to defend ourselves before the courts in the very injunction case involved; because in lectures and on the public platform, during the presidential campaign I made addresses to the people giving the reasons for the vote as a citizen I was to cast at the then

pending presidential election, and because I dared editorially to discuss the fundamental principles involved, not only in the injunction pending, but in the entire abuse of the injunction writ. Aye, because I published in the *American Federationist* the order of the court to show cause why we should not be punished for contempt of the injunction was made part of the testimony upon which Justice Wright deemed it important to hold me guilty."

Mr. Gompers testified that these were the things which he had in mind when he employed the language incorporated in this charge (fol. 624), and said that he did not intend, by the utterance set forth in the charge, to admit that any one of the publications was for the purpose of aiding, abetting or assisting an alleged boycott against the Buck's Stove & Range Company (fol. 541).

CHARGES AGAINST DEFENDANT MORRISON ALONE.

Circulating Resolution Relating to "Campaign of Education."—Paragraph I (fols. 240-241) of the charges against the defendant Morrison relates generally to the distribution of the printed proceedings of the Norfolk convention, and specifies, as contained in the proceedings, a resolution adopted by that convention for the prosecution of a "campaign of education."

As has been shown, the distribution of printed copies of the official report of the Norfolk convention was not intended to further a boycott and could not have that effect. The facts and the reasoning upon which this statement is based also show that circulating of copies of the resolution relating to the "campaign of education," by distributing copies of the proceedings of which the resolution is a part, cannot have been intended, and could have no effect, to further a boycott.

And we have seen, in discussing the discontinuance of the alleged boycott, that the uncontradicted testimony establishes the fact that nothing was done pursuant to this resolution, after the 23d day of December, 1907, when the injunction became operative.

It seems to be too clear for controversy that the resolution relating to the proposed "campaign of education," which was abandoned when the injunction became effective, was circulated merely because it happened to be a part of the proceedings of the Norfolk convention, and not for the purpose of aiding an alleged boycott against the Buck's Stove & Range Company, and that, because of the manner in which it was circulated, it could not have any such effect.

Circulating Sundry Numbers of the 1908 Federationist.—The remaining charge against the defendant Morrison is the general accusation, contained in paragraph IV (fols. 248-249) of the charges against him, of circulating copies of the *American Federationist* for certain months of 1908, alleged to contain references to the Buck's Stove & Range Company in connection with the "We Don't Patronize" or "Unfair" list and other references to the controversy with that company.

In failing to specify the particular utterances in these publications which are relied upon by the prosecution as violations of the provisions of the decree enjoining a boycott, this charge is much too vague and indefinite to satisfy the rule that a defendant in a prosecution for criminal contempt is entitled to be informed of the nature and cause of the accusation.

However, some of the utterances contained in the numbers of the *Federationist* mentioned in this paragraph of the charges have been considered above in the section entitled "Charges Against Both Defendants Gompers and Morrison." Because of the vagueness of the language of the charge this is all that can be done.

CHARGES AGAINST DEFENDANT MITCHELL ALONE.

In addition to the accusations against the defendant Mitchell which have been treated above under the heading "Charges Against Each and All of the Defendants," there is one which is made against him only. This charge will now be considered.

Presiding Over Convention of United Mine Workers Adopting Boycott Resolution.—In paragraph III (fols. 182-185) of the charges against the defendant Mitchell, he is accused of presiding, on or about the 25th day of January, 1908, over the annual convention of the United Mine Workers of America and willfully entertaining, putting to a vote and declaring to have been adopted a resolution providing for the imposition of a fine of five dollars on any member of the United Mine Workers of America purchasing a stove made by the Buck's Stove & Range Company.

There is absolutely no evidence which justifies the holding of Mr. Mitchell responsible for the adoption of this resolution. The prosecution has introduced no evidence to show that Mr. Mitchell had anything to do with the preparation, the presenting, or the passing of the resolution, or that he knew anything about the matter until the former contempt proceedings were brought.

On the other hand, there is uncontradicted testimony that Mr. Mitchell had nothing to do with preparing or submitting the resolution, and that he had no knowledge that such a resolution was contemplated (fol. 639).

The only ground upon which Mr. Mitchell can be held responsible for the adoption of this resolution is that he was presiding over the convention when it was adopted.

But there is no evidence to establish it as a fact that Mr. Mitchell was presiding at that time, and, moreover, if he was presiding, it may well be that he was not conscious of

the adoption of the resolution—that is, acquainted with the terms of the resolution adopted.

The record of the proceedings is of no value to show who was presiding at the particular time when the resolution was adopted; for, while it shows that Mr. Mitchell was in the chair when the session was opened, no further record as to the presiding officer was made, and it fails to show who presided in the temporary absence of the Mr. Mitchell, who was president of the United Mine Workers (fols. 637, 673, 674), and Mr. Mitchell was frequently absent from the chair during the sessions of this convention.

Mr. Mitchell testified that he was then recovering from a protracted and severe illness, or series of illnesses (fols. 637-639, 663-665, 679), and he did not perform his duties as presiding officer as he had in other years (fols. 665-666), but frequently called others to the chair (fol. 637). This testimony is corroborated by a witness for the prosecution, Wilson, who was a delegate to the convention (fols. 368, 369).

Mr. Mitchell testified that, while he was not prepared to say whether he was or was not in the chair at the time when the resolution was adopted (fol. 637), he had no recollections as to whether he presided at that time; he may have presided, but had no recollection that he did (fols. 637, 639, 674, 679), and he had no recollection of the passing of the resolution (fols. 637, 717).

There is, then, a total absence of evidence that he was presiding at the time when this particular resolution was adopted.

But, even if he was presiding, it may well be that he had no knowledge of the purport of the resolution. There was no discussion of the resolution when it was adopted by a unanimous vote (fols. 640, 669-670), the procedure of the convention was such that it might readily be adopted without attracting the special attention of the presiding officer (fol. 639), and this resolution was one of a great many,

possibly from 50 to 60, reported at the same time by the Committee on Resolutions (fol. 640).

Hence, one can readily believe the testimony of Mr. Mitchell that, if he was presiding at the time, he was not conscious of the fact that the resolution was before the convention for adoption (fols. 600-601, 717).

However, we shall not rest our contention that the adoption of this resolution by the 1908 convention of the United Mine Workers does not show an intention by Mr. Mitchell to violate the injunction by furthering a boycott upon the fact alone that, so far as the record shows, he was not in the chair and, therefore, took no part in the adoption of the resolution, nor, if he was in the chair, upon the fact that he had no knowledge of the terms of the resolution at the time when it was adopted.

Even if it were proved that Mr. Mitchell was presiding over the convention when the resolution was adopted, and had full knowledge of the general tenor and terms of the resolution at the time, the court may yet with propriety say that, giving him the benefit of a presumption of innocence, he did not intend to violate the provisions of the injunction which enjoin a boycott, and should not be punished for contempt because of his connection with this resolution.

It was Mr. Mitchell's duty as president of the miners' organization to preside over this convention. And when the adoption of the resolution was moved, what was he to do, assuming that he was conscious of the full import of the resolution? He had, of course, three alternatives. He could have resigned his position as president of the United Mine Workers of America, or he could have called some other member to take the chair, thus shirking his own responsibility by placing it upon the shoulders of another, or he could have become the advocate and defender of the Buck's Stove & Range Company and opposed the passage of the resolution. The injunction did not require Mr. Mitchell to advocate the cause of this concern, and he could not do

so without turning traitor to the cause in which he was enlisted. Under these circumstances a criminal intent cannot be presumed, and punishment for contempt because of this purely technical and involuntary violation of the injunction would seem to be out of place.

The prosecution has relied upon certain statements in an address delivered by Mr. Mitchell at Indianapolis on January 22, 1909 (fol. 184). The first sentence of the extract from this speech, which is quoted in the charges, is as follows: "The court says further that I presided as president of the United Mine Workers at a convention here in which a resolution was passed violating that injunction." What follows is, in effect, a protest against, and an implied criticism of, holding him responsible for the resolution on so slight a ground. The comments contained in this part of the speech do not discuss the question of fact as to whether he did or did not preside, but the fact that the courts, having found that he presided, punished him for contempt because of that fact, notwithstanding the situation in which, assuming that he was in the chair, he had been placed by force of circumstances, and from which he could not extricate himself in any creditable way.

Mr. Mitchell testified that, while the Indianapolis speech did not disclaim knowledge of the passing of the resolution by the convention held one year earlier, he did not at that time have any more knowledge of the passing of the resolution than he had at the time of testifying, and he had none then (fol. 646).

APPLICATION OF PURGATION RULE TO CASES AT BAR.

It is believed that the case against each of these defendants presents a case in which the rule which permits a defendant to purge himself of charges of contempt by a denial under oath of wrongful intent should be applied, if there ever can be such a case.

CRIMINAL NATURE OF PROCEEDINGS.

According to our reading of the opinion by this court in the former contempt proceedings against these defendants (*Gompers vs. Buck's Stove & Range Company*, 221 U. S., 418), these proceedings are for the punishment of a purely criminal contempt. The equity suit, out of which these proceedings arose, was at an end when they were commenced, and the complainant in that suit was no longer interested in having the injunction therein granted enforced. Hence the punishment to which the defendants have been sentenced cannot have even the incidental remedial effect referred to in the opinion of this court.

Therefore the fact that the rule as to purgation is applicable only in proceedings at law for criminal contempt does not stand in the way of its application in these cases.

CHARGES INVOLVE VIOLATION OF ONLY PROVISIONS AGAINST A BOYCOTT.

If these proceedings were to punish the defendants for the violation of any and all provisions of the injunction, the rule would have no application to the facts of this case, for the defendants have not denied, and could not deny, that they may have violated the provisions of the decree which attempted to deprive them of their constitutional rights of

free speech and free press—provisions which the Court of Appeals held to be in excess of the power of a court of equity (33 App. D. C., 83).

Upon the trial the defendants were called upon time and time again to defend themselves against the charge of violating these provisions of the decree. They did not try to defend themselves, and they could not successfully have done so had they tried. They were in precisely the same position when they were confronted with this charge as was Mr. Gompers when he said, "The things I have been charged with, I did." Standing upon their inalienable rights of free speech and free press guaranteed by the Constitution, and upon the law of contempt in the courts of the United States as restricted by Congress, the defendants have referred to the controversy out of which arose the equity suit, have criticised the injunction decree, have denied the power of the court to render that decree, have declared that the decree could not compel members of labor organizations or its friends to purchase the complainant's products, have, at least impliedly, denied the power of the court to prevent them from declaring the unfairness of the complainant to labor, and have declared that they did not see how they could comply with all the terms of the decree.

But, as we have seen, the defendants have, under oath, disclaimed any intention of violating any of the provisions of the injunction enjoining a boycott, and have denied that any of their acts and utterances violated those provisions by furthering a boycott of the kind that was enjoined by the decree, and even of furthering any form of boycott which the most extreme decisions recognize as a boycott within the law.

EXPLANATION BY DEFENDANTS OF REAL PURPOSE OF ACTS
AND UTTERANCES.

The defendants have not only denied any intention to further any boycott in violation of the injunction, but they have presented proof of the real object and purpose of their acts and utterances.

Had the injunction issued in the suit by the Buck's Stove & Range Company been limited, as it later was limited by the decision of the Court of Appeals in modifying and restricting the terms of the decree (33 App. D. C., 83), there would be a reasonable basis for a claim that the acts of the defendants were intended to encourage and aid a boycott of the complaint, but when one's mind reverts to the extraordinary and unprecedented provisions of injunction which attempted to deprive the defendants, and all other representatives of labor, of the right to state their side of the controversy for the purpose of obtaining funds to have the questions involved determined by the higher courts, to deny them the right to present the facts of the controversy between the parties to the suit and the terms of his oppressive, illegal, and void decree to Congress and to the public for the concededly legitimate purpose of obtaining legislation to prevent a similar abuse of the writ of injunction in the future, and, in fine, to paralyze every important function and activity of labor organization to establish the reasonable and just claims of labor by depriving them and their representatives of the right publicly to discuss the grievances which they were seeking to have remedied by the courts and by Congress, it becomes more than questionable whether any of the acts and utterances of the defendants were intended for the purpose of aiding or abetting in the slightest degree a boycott in violation of the provisions of the injunction. Surely this is a case, if there ever can be one, where the acts relied upon to establish contempt of court are of an ambig-

ous nature, calling for the application of the rule as to the purging of contempt.

ATTEMPT BY TRIAL COURT TO OBTAIN ADMISSIONS OF GUILT.

Ignoring these features of the injunction and the embarrassing situation in which they placed the defendants, the trial court, before the case had been argued by counsel, and even before all the evidence had been introduced, attempted to obtain a confession of guilt from the defendant Mitchell (fols. 734-739, 754-757, 762-763).

But, as might have been foreseen, Mr. Mitchell refused to admit that he had done anything to violate the provisions of the injunction enjoining a boycott, or anything that he had not a right to do. In the course of colloquys between the court and the defendant Mr. Mitchell said (fol. 754):

"As I have asserted, and asserted candidly and truthfully, all the way through this case, I have not disregarded the injunction of the court. I have not assisted or aided in the prosecution of a boycott.

"I should like the court to believe the statements and the evidence I have given in this case. I should like the court to acquit me, based purely on its belief in the truthfulness of my evidence. I do not want—permit me to state it this way:

"I am strongly disinclined to make any statement that would be regarded as either directly or inferentially an acknowledgment that my testimony in this case is not the fact, and that I would seek relief from the charges preferred against me by any other process than my evidence, which I have given in this case. That is the way I feel about it, your honor, and I should like very much, if I could, to have you understand how I feel about it. At any rate, I ask that your conclusions be reached based upon my evidence and the evidence in the case, and that you believe that my evidence has been given candidly and sincerely, and that my statement that I have not violated the injunction which was issued by Judge

Gould is true; that is to say, I have not aided in any way in the furtherance of a boycott. I should like you to believe that those statements are true."

Later the defendant Mitchell, in pursuance of an understanding with the court, filed a letter which contains the following (fol. 771):

"I have given the court's recommendation careful thought and serious consideration as a result of which I desire to say that I believe a statement by me that I 'expect hereafter to lend adherence to the decrees of the judicial tribunals of the land' would be subject to no other interpretation than that I had heretofore failed or refused to comply with the lawful decrees of the courts and that my evidence in this proceeding was not truthful and sincere and in keeping with the facts in the case. I am not willing to make any statement that would impugn my own testimony. I am not willing by any device or subterfuge to attempt to deceive the court or secure an acquittal by any other means than those of the evidence and the truthfulness of my testimony."

Counsel for the prosecution elicited a refusal to apologize for acts of which they were not guilty from both Mr. Gompers (fols. 634-635) and Mr. Morrison (fols. 889-890).

In the majority opinion of the Court of Appeals it is said, in effect, that this refusal of the defendants to accept the suggestion to make apology and give assurance of future submission to the court "is important in measuring the intent and temper of respondents" (p. 774). It is stated further that three courts, culminating with the Supreme Court of the United States, have held against the defendants in their contention that the order of injunction was an abridgement of the right of free speech and free press.

We do not understand that this court has held that the injunction did not violate the right of free speech and free press. Our understanding of the decision in *Gompers vs.*

Buck's Stove & Range Co., 221 U. S., 418, 435-437, is that this court merely decided that the injunction as a whole was not a nullity, and that the provisions therein which enjoined spoken words and printed matter to make effective a boycott were within the power of the court.

In the concluding part of Chief Justice Shepard's dissenting opinion the attitude of the majority of the court in considering the refusal of the defendants to accept the suggestion of counsel for the prosecution and of the trial court that they should apologize and give assurance of future submission to the court "important in measuring the intent and temper of respondents" is commented upon, in part, as follows:

"This suggestion assumes the guilt of each defendant, and is that they confess that guilt, make due apology, and assurance of their submission in future to the law as pronounced in the opinions of the courts * * *. I am unable to see how the refusal to apologize for an act, the commission of which had been expressly denied, shows a reprehensible intent or temper. On the contrary, it seems to me the natural conduct of a self-respecting man. Having sworn that he had neither disobeyed nor intended to disobey the mandate of the court, a confession that he had done so would be a solemn admission of the commission of wilful perjury. Moreover, the demand that the court be acquainted 'before these proceedings close, with your conviction whether you ought and whether you hereafter expect to lend adherence to the decrees of judicial tribunals of the land in matters committed by law to their jurisdiction and power,' is entirely outside of the offense charged, and beyond the power of any court."

AID GIVEN PROSECUTION BY DEFENDANTS.

The sincerity of these defendants in their brief that their constitutional rights had been invaded by the injunction decree, and the honesty of their protestation that they had

done nothing with the intention of violating the provisions of the decree enjoining a boycott, is emphasized by the fact that, throughout these and the former contempt proceedings, they materially aided the prosecution by supplying information and otherwise making it easier for the prosecution to present the full strength of the case against them.

The defendant Gompers, although fully advised of his rights, deliberately waived his right not to be cross-examined on statements contained in the answer filed by him in the former contempt proceeding (fols. 569-570).

Mr. Morrison freely consented to the reading into the record of the sixteenth paragraph of his answer in the former contempt proceeding (fol. 822), of the thirteenth paragraph of the petition in that proceeding, and his answer thereto (fol. 825), and of paragraphs 7, 8, 9, 10, 11, and 12 of that petition with his answers (fol. 860). He also supplied the prosecution with all the information that there is in the record about the sending out of 37 copies of the January, 1907, *Federationist* (fol. 803).

And Mr. Mitchell furnished the prosecution with information as to what the proceedings of the Mine Workers' convention adopting the boycott resolution, which is made one of the charges against him, showed as to who was presiding over the convention when the resolution was adopted (fols. 637, 665, 674). This information is the only possible basis of the finding by the court holding him responsible for the resolution. And this erroneous finding is, in turn, the only possible basis for his conviction of contempt.

It should be remembered, too, that these waivers were made, and all this information was furnished, almost wholly before the defendants were informed, or had reason to believe, that the proceedings were based upon the alleged violation of only the provisions of the decree enjoining a boycott.

RESPONSIBILITY OF VOID PROVISIONS OF DECREE FOR SEEM-
ING CONTEMPT.

The foregoing review of the facts of these cases has been to little purpose if it has not been made clear that there would, in all probability, have been no charges of contempt brought against these defendants had not the injunction decree contained the extreme and unprecedented provisions which either violated or seemed to violate the Constitutional guarantees of free speech and free press—provisions which seemed to the defendants and their counsel to violate these rights and which the Court of Appeals, in deciding the appeal in the equity case (*American Federation of Labor vs. Buck's Stove & Range Co.*, 33 App. D. C., 83), held to be in excess of the power of a court of equity.

Had the attorneys for the complainant in the equity suit been satisfied with a decree in terms similar to those contained in the decree as modified by the Court of Appeals, the complainant would have been amply protected, the defendants would have had no reason to feel that their constitutional rights had been denied them, would have had no occasion to use much of the language which they employed in editorials, speeches, and circulars and which is chiefly relied upon here to convict them of contempt, and these contempt proceedings probably would never have been heard of.

But these attorneys were not satisfied with a decree which would be sufficient to protect the rights of the complainant in the equity suit. They wanted something more.

The reason why they wanted something more is plain. These gentlemen, while acting as attorneys of record for the Buck's Stove & Range Company, were really in the employ of, and paid by, the American Anti-Boycott Association (fols. 39, 52-56). And more than this Mr. Van Cleve, who was president of the Buck's Stove & Range Company, was then president of the National Association of Manufacturers,

which was bitterly antagonistic to the labor movement (fols. 955-956).

Hence these gentlemen wanted an injunction which would not only protect the complainant, but which would tend to advance the purpose of these two great national associations to render ineffective, and even destroy, organizations of labor.

Accordingly the prayer for relief was drawn broad enough to accomplish this ulterior purpose, and the prayer for relief, as contained in the bill, was incorporated in the decree of the court.

The attorneys for the prosecution have never abandoned, but have clung with great tenacity, to these provisions of the decree, as appears from the facts, among others, that the defendants are charged, in these as they were in the former contempt proceedings, with distributing the printed reports of the proceedings of the 1907, or Norfolk, convention of the American Federation, and in circulating the "Urgent Appeal" for financial assistance.

The belated statement by the trial court to the effect that the violation of the provisions enjoining a boycott was the only question in the cases did not serve to limit proceedings to that question. The violation by the defendants of the provisions which they claim to be unconstitutional and void have never been absent from these cases. The scope and the vagueness of the charges, the facts to which many of the questions put to the defendants by the prosecution were directed, the probative tendency of a great deal of the testimony introduced by the prosecution or elicited from the defendants on cross-examination, the scope of the arguments by counsel in the court below, the decision of the Court of Appeals finding each of the defendants guilty of every accusation against him, and, above all, much of the language employed in the opinion by the trial court, combine to make clear the fact that the question of the violation of the provisions of the decree which are not limited to the enjoining of a boycott, but which go much farther than

this and forbid any discussion of, or reference to, the controversy between the parties to the equity suit, or any account of or comment upon the action of the court in issuing the injunction, have never been absent from the cases, but were present from beginning to end and had their influence, not only on the conduct of the prosecution and of the defense throughout the trial, but on the decision of the questions involved by the trial court as well as by the Court of Appeals.

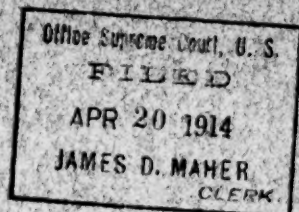
Conclusion.

In view of the errors of fact upon which the opinion of in trying in equity a criminal proceeding, in overruling the statute of limitations, in recognizing by no dissent the practice of directing inquiries as to possible guilt by those who are committed in advance, and in other material respects, we respectfully ask that the decision below should be reversed and proper relief granted.

Respectfully submitted,

JACKSON H. RALSTON,
WM. E. RICHARDSON,
Petitioners' Attorneys.

ALTON B. PARKER,
Of Counsel.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 640.

**SAMUEL GOMPERS, JOHN MITCHELL, AND FRANK
MORRISON, PLAINTIFFS IN ERROR AND RESPONDENTS,**

vs.

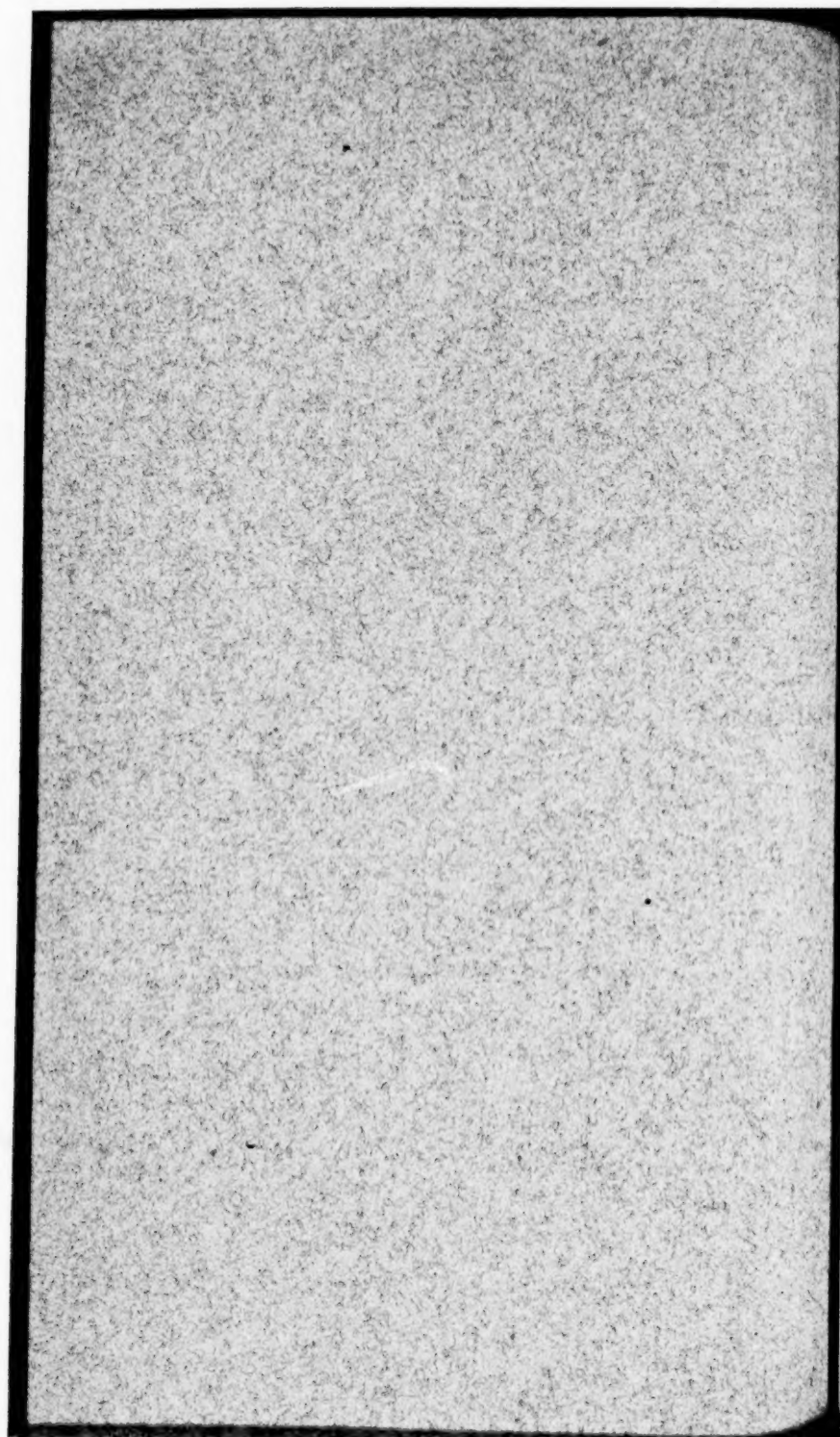
THE UNITED STATES.

**BRIEF OF PLAINTIFFS IN ERROR AND APPELLANTS
UPON RE-ARGUMENT.**

**JACKSON H. RALSTON,
WM. E. RICHARDSON,**
Attorneys for Plaintiffs in Error and Appellants.

ALTON B. PARKER,
Of Counsel.





IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 640.

SAMUEL GOMPERS, JOHN MITCHELL, AND FRANK
MORRISON, PLAINTIFFS IN ERROR AND RESPONDENTS,

vs.

THE UNITED STATES.

**BRIEF OF PLAINTIFFS IN ERROR AND APPELLANTS
UPON RE-ARGUMENT.**

I.

Introductory.

It has seemed to the attorneys for the plaintiffs in error and appellants, in view of the fact that the case is to be re-argued, that the attention of the court should be invited to some additional authorities clarifying the situation, particularly with regard to the nature of criminal informations and the circumstances under which they were brought and prose-

cuted at common law, and furthermore that certain errors contained in the brief for the committee should be developed.

II.

The Nature of Criminal Informations at Common Law and Manner of Their Filing and Prosecution.

It is in effect the contention on behalf of the committee that the word "information," as used in section 1044 of the Revised Statutes, refers to such criminal informations as may be filed and prosecuted only by the District Attorneys and Attorney General of the United States. We have discussed this somewhat in our original brief, but believe that we may now be able to add considerations of value which tend to show the position taken by our opponents to be essentially erroneous.

Shortt on Informations (page 1) says that:

"An information is a suggestion upon record by which, in certain cases, the matter of a suit is allowed to be brought before the High Court of Justice, and is so called from the words by which it gives the court to understand and be 'informed of' the facts alleged in it."

Cole on Informations (page 1) says:

"An information for an offense is a surmise or suggestion upon record on behalf of the King (or Queen regnant) to a court of criminal jurisdiction and is to all intents and purposes the King's suit" (exactly what is meant by this expression when used by Cole will be hereafter considered). "Criminal informations" (he continues), "derive their origin from the common law. * * * They may also be filed by the Queen's coroner and attorney (commonly called the Master of the Crown office), but not without previous leave of the Court of Queen's Bench

given in open court and a recognizance being entered into by the prosecutor pursuant to the Statute, 4 & 5 W. & M., chapter 18, section 8."

Blackstone's Commentaries, chapter 23, section 3, after mentioning those filed by the Attorney General, says:

"Second, those in which the King is the nominal prosecutor, yet it is at the relation of some private person or common informer and they are filed by the King's coroner and attorney in the Court of King's Bench, usually called the Master of the Crown office, who is for this purpose the standing officer of the public."

We are left then to determine the exact extent to which informations may be said to have an official character dependent upon being filed by the Queen's coroner and attorney, as this determines their official character.

The use of this particular officer in filing a criminal information is shown to have existed prior to the Statute of William and Mary and his office was resorted to at common law. Shortt on Informations (page 4) refers to *Prynn's* case, 5 Mod., 459, and to Shower's argument on the general subject of informations contained in Shower's Reports, volume 1, page 106. Chief Justice Holt in the case cited said:

"Informations were at common law and so the statutes do suppose."

And the reporter adds at the conclusion of the opinions in this case:

"All of the court were of opinion that informations lay at common law."

Investigation of the matter shows that the part played by the coroner was not an important one at common law or even

under the Statute of William and Mary. He filed informations at common law as a matter of course, and thereupon the action proceeded ordinarily under the supervision of the solicitor for the complaining party. Lord Mansfield, in *Rex vs. Robinson*, 1 Wm. Blackstone, 541, says:

“Informations at common law (which are very ancient in this court) were filed by the coroner, who did it upon application as a matter of course.”

Once filed, as we have stated, the proceedings were conducted by the complainant's legal representative, not necessarily at all by the government, the coroner, as we have stated being merely in effect a clerk. Thus in the case of the King on the Prosecution of Hunt *vs.* Justices of Lancashire, 1 Chitty, 602, application was made by the prosecutor in person for a rule to show cause, and the court said:

“That it was not competent for a private individual to apply for a criminal information. Such motion could only be made by the law officers of the crown or by a barrister, who was in the nature of a public officer.”

When it came to the active prosecution of such suits, as is shown by Cole on Informations (pages 286, 287), notice to the defendant to appear and plead to an information was given by the solicitor for the prosecutor and other notices of like character were given in the same manner (p. 288).

Like forms cited in Shortt on Informations (pages 500, 501, 502, 511, 515, and 516) are to similar effect. Of course these remarks have no relation whatsoever to such informations as to grave offenses as are filed *ex officio* by the Attorney General or Solicitor General.

But it is contended that in the United States the Statute of William and Mary never was in effect, and that here all informations must be filed by the law officers of the Government, else they are not informations such as contemplated

by the statute, and to this effect there have been cited some half dozen decisions of the State courts. What the State courts held in their construction of the constitutions of their several jurisdictions it is not necessary for us to consider, but we do contend that common law informations altered as changed circumstances required were known at the time of the passage of our original Statute of Limitations, however rarely they may have been resorted to, and therefore, Congress had in mind informations of the same general nature as were permitted at common law. Thus in *Respublica vs. Prior*, 1 Yeates, 206, decided January, 1793, it was held that when a party moves for an information he must enter into recognizance for payment of costs; *aliter* when the Attorney General moves for the rule officially. In *Respublica vs. Griffiths*, 2 Dallas, 112, leave was granted to file an information against the defendant, and it became a question whether the information should be drawn, filed and prosecuted by the Attorney General or by the party at whose instance it was awarded. The Attorney General objected that it was not his duty to draw and file the information: that it must indeed be in the name of the Commonwealth and the prosecutor may make use of the name of the officer who prosecutes for the State; that there was in England an established distinction between informations filed by the Attorney General, and those filed by him at the relation of a private person in the name of the Master of the Crown office. Informations, it was stated:

“At the relation of private persons, are in a great measure private suits. They are moved for and conducted, not by the officers of the crown, but by counsel employed by the prosecutor. * * * The prosecutor, therefore, ought to be at the expense and employ his own counsel, in this proceeding, in which he is really interested. If it be the duty of the Attorney General to file this information it is his duty to prosecute it also.”

The decision of the court following the foregoing argument was brief. It said:

"The objection is reasonable and just. But *pro forma* the Attorney General must allow his name to be used by the prosecutor."

This decision was given in 1790, and we can through it understand why it was that informations might be filed within the meaning of the common law by a private individual and the name of the United States used, as it was entitled to be used, under the decision of this court in the former contempt case.

Before leaving the subject entirely we desire to advert, as of incidental value, to a few lines contained further in the opinion of Rex *vs.* Robinson, 1 Wm. Blackstone, 541, in which Lord Mansfield said that there were other grounds besides those stated in the statute by which the court had limited itself. Among them were—

"Second, the time of application. As to this no precise number of weeks, months or years, but if delayed the delay must be reasonably accounted for."

We should add that the crimes and offenses committed against the provisions of chapter 7, entitled "Crimes" and which are not infamous, may be prosecuted either by indictment or by information filed by the District Attorney, but it is not to be contended that other offenses, not embraced within that chapter and not infamous, may not be prosecuted otherwise.

III.

Errors Committed in the Brief of the Committee.

1. *That the committee's report does not limit itself to the charges of violation of the order of December 18, 1907.*

On page 64 it is stated as follows:

"The sixth question, raised by assignment VII, is whether violation of the permanent injunction, of March 30, 1908, was charged in the contempt proceeding, and whether, therefore, there was not error in the conviction of the appellants for its violation.

"No argument in support of this assignment is found in the brief for respondents, from which it is, perhaps, fair to assume that it has been abandoned. Its foundation, as presented to the court below, was the following:"

This is very far from the fact. The exact question is discussed on our brief on pages 25 to 31, inclusive, when considering the general observations with relation to the real nature and effect of the charges made against the plaintiffs in error and the appellants. We concluded our argument upon this point with the following pertinent language:

"2. The direction of Mr. Justice Wright to the committee had relation to no act of contempt except such as might have been alleged to have been committed against the provisions of the order of December 18, 1907.

"3. The report of the committee had relation only (because the committee's functions were limited and were not understood by it) to violations of the order of December 18, 1907.

"4. The rules to show cause, signed by Mr. Justice Wright, if intended to be based upon supposed violations of the decree of March 23, 1908, were void to that extent as having no foundation in evidence be-

fore the court, or any affidavits or sworn information or petition, the report relating only to the decree of December 18, 1907.

"As a result of the foregoing, it must follow either—

"(a) That the rule to show cause was without any foundation whatever to justify its issuance, and therefore the whole proceeding is void, or

"(b) That assuming that the acts complained of are fairly the subject of contempt proceeding, they are to be regarded as barred, because based upon an order expiring 3 years and 3 months before their institution, and being controlled by the statute of limitations, as we shall hereafter show."

2. That the appellants did not insist on their plea of the statute in the court below.

It was contended in the committee's brief, and also on the prior argument in this court, that the question of the Statute of Limitations had not been raised in the trial court. We remind this court that, to the contrary, it was understood by court and counsel all the way through that the testimony was being taken subject to our plea of the statute and our objections upon this point were considered as taken and overruled. We quote as to this first from page 353 of the record:

"At the conclusion of this offer the following colloquy occurred and agreement was made between counsel:

"**MR. RALSTON:** If your honor please, it will, of course, be understood that I have not made specific objections as we went on. Of course it will be understood that all of the evidence which has been introduced is subject to the exception originally reserved by us affecting the question of the statute of limitations. In other words, all the events complained of are barred by the statute of limitations and all the offers to prove tend to show, if anything, events which were barred by the statute of limitations.'"

Again at the very conclusion of the case, page 746, referring to the objection just noted and having no reference, as the committee seems to imply, to a motion which was overruled long before the taking of testimony began, the following occurred:

“MARCH 11, 1912.

“Mr. Ralston, for the respondents, stated upon the hearing of the cause that there was at least one general exception presented on behalf of the respondents and that related to the question of the statute of limitations, and it was the understanding that the testimony was taken subject to respondents' exception and objection” (Rec., p. 746).

These colloquies and agreements were had and made in the presence and with the assent of the trial judge.

3. *Errors in Committee's brief with reference to authorities.*

The committee's brief (pages 91 and 104) refers to *In re Nevitt*, 117 Fed., 448, as if it were authority to show that the President's power of pardon did not extend to criminal contempts and that it demonstrated that the doctrine of *In re Mullee*, 7 Blatchford, 23, cited in our brief on page 46, had been abandoned by Judge Blatchford. It is interesting to note that neither one of these propositions is correct. The case of *Nevitt* was one of a purely civil contempt, and the want of power in the President to pardon a purely civil contempt has never been denied by us. The case does not decide the question of the President's right to pardon for criminal contempt. To demonstrate the correctness of what we say we quote the following from page 458:

“It is not, however, necessary to a decision of the application before us, nor is it our purpose, to here decide whether or not criminal contempts, contempts instituted solely for the purpose of vindicating the dignity of the courts, preserving their power and

punishing disobedience of their orders, fall within the pardoning power of the Executive. * * *

"The decision of this application rests upon another and upon an impregnable position. This is not a criminal, but a civil contempt—a proceeding instituted for the purpose of protecting and enforcing the private rights and administering the legal remedies of the judgment plaintiff, Douglas; and whatever the authority of the President may be to pardon for a criminal contempt, he is, upon principle and upon authority, without the power to relieve from either fine or imprisonment imposed in proceedings for contempts of this character. He has no more power to deprive *private citizens* of their lawful rights or legal remedies without compensation than have the courts or the Congress."

Upon the other point, the supposed retraction by Mr. Justice Blatchford, it consists simply in this: That, believing the cases of *Mullee*, 7 Blatchford, 23, and *Fischer vs. Hayes*, 6 Fed., 663, to be cases of criminal contempt, he declared in the first—

"It is well settled that contempt of court is a specific criminal offense,"

and in the second—

"A contempt of court is an offense against the United States,"

but, subsequently, it being discovered that the contempt charged was merely civil, his attitude toward the case was changed. His declaration as to the characteristics of a criminal contempt remained unchanged.

4. *With regard to decisions affecting sufficiency of the plea of statute.*

Seeking, as the committee does, to break, if it may, the effect of the fact that the only authorities where the statute

of limitations has been directly called into play have been in favor of the appellants, the committee quotes first the case of *Matheson vs. Hanna-Schoelkopf*, 122 Fed., 836, wherein the court does not express any opinion on the subject except that, after a delay of four years, the court should be reluctant to inflict punishment for a civil contempt, having no power to decide whether the statute of limitations would apply "if the offense was indictable." Whether it was indictable or not the court was not called upon to say, and its opinion (if, indeed, expressed) would have had value only as *obiter*.

The next case the committee quotes is that of *Dale et al. vs. Roosevelt*, 1 Paige, 35. This involved no question as to the statute of limitations, and the contempt alleged was apparently civil in its nature. An injunction had been granted against suit at law, but thereafter one was commenced, and after two or three years proceedings in attachment were begun for breach of the injunction. The breach was apparently a continuing one, and was continually protested against. The case, therefore, is in no respect in point, although the attachment was refused on other grounds than the default in the application for it.

The committee next rely upon the case of *Hay, etc.*, 22 App. Div., N. Y., 87. This case was an application for civil contempt because of a fraud practiced upon the court, and no question of criminal contempt was involved at all, although it is noticeable that the very language of the court quoted by the committee indicates that, because of the lapse of time—

"it may be that this respondent cannot be punished criminally."

In so far, therefore, as the case is an authority at all, it is an authority in favor of the appellants.

Although the only questions before this court relate to criminal contempt, we also find cited as an authority in

point the case of *Albany Bank vs. Schermerhorn*, 9 Paige, 372, which was one of purely civil contempt.

5. *Further miscitation relative to informations.*

Although in the court below the committee's attention was directly called to the fact that they had miscited the case of *State vs. Ashley*, 1 Ark., 279, 303, they again say that in this case—

"it is pointed out that there is no precedent for informations at the instance or at the relation of private parties prior to the Statute of Anne, and that they could not be so exhibited afterward, except in the cases mentioned in the statute."

The fact is that the case referred to related to informations in the nature of *quo warranto*, and that the court was not discussing informations of any other nature. What the court did say, misquoted by the committee, is the following:

"Informations as the basis or institution of a criminal prosecution are said to have *existed coeval with the common law itself*, but as a mode of investigating and determining *civil rights* between private parties, they seem to owe their origin and existence to the Statute of 9th Anne, which expressly authorized the proceeding in all cases of intrusion or usurpation of corporate offices in corporate places."

IV.

Additional Citations.

We omitted in our brief two cases touching the question of the necessity of sworn informations in the case of indirect contempt, which we particularly cite as containing extensive résumés of the general subject to the effect indicated, and showing in the latter case that the statutes requiring said

sworn complaint are merely declaratory of the common law. These are *Ex parte* Landry, 114 Southwestern, 962, and *Ex parte* Fuller, 128 Pac., 64.

JACKSON H. RALSTON,
WM. E. RICHARDSON,
Attorneys for Plaintiffs in Error and Appellants.

ALTON B. PARKER,
Of Counsel.

INDEX.

	Pages.
The Case, How Here	1-2
The Case, How Entitled, etc.....	2, 33-34
Not a Case Reviewable on Error or Appeal..	17-18, 35-37
Reviewable by Certiorari	18, 25-27
The Application of the D. C. Supreme Court	
Properly Allowable	18-25
The Facts:	
Remanded by This Court, for What Purpose.	2-5
Appointment of the Committee.....	5, 9
Its Report, Charging Contempt	6
Rules to Show Cause	8
Objection to Personnel of Committee, and	
Action Thereon	8-9
Pleas and Answers	9-10
Motions to Dismiss, Grounds, and Denial of.	10-11
The Testimony, How Taken	11-13
The Assignments of Error, and the Questions	
Raised Thereby	14-17
I. The Jurisdiction in Equity to Punish for	
Contempt	27-32
II, III. The Objections to the Committee....	32-33
IV. The Denial of Motions to Dismiss for	
Want of Replication	34
V. The Alleged Denial of the Defense of	
Limitations:	
No Such Questions Presented in the	
Record	35-37, 57-58
The Statute Invoked, Section 1044 of	
the U. S Revised Statutes.....	34, 47
If Applicable, Did Not Commence to	
Run Until July 19, 1910.....	38
Not Applicable, Because Contempts Not	
Crimes	38-47, 60-64
No Common Law Crimes in the Federal	
Courts	39-42
Contempts Not Subject to Executive	
Pardon, as Crimes Are	45-46

	Pages.
Contempts Not Prosecuted by "Indictment"	47-48
Contempts Not Prosecuted by "Information"	49-53
The Committee's Reports Not "Informations"	49-55
Statute of Limitations, Inapplicable to Equity Courts	55
Each Respondent Convicted of Contempt Within the Three Years	55-57
Appellants' Authorities on Limitations as a Defense	58-60
Neither Limitations nor Laches a Bar in Contempt	61-63
VI. Objection That Violation of the Final Injunction Not Charged	64-66
VII. Objection That Boycott After Date of the Injunction Not Proven	66
VIII. Objection That Evidence Insufficient to sustain Conviction of Contempt	67 <i>et seq.</i>
Boycott Continued Until Submission of Its Victim Enforced	71, 90-93
Mitchell and the Mine Workers' Resolution of January, 1908	71-72
Mitchell and the Mine Workers' Journal	72-73, 76
Mitchell and the "Urgent Appeal"	77-78
Mitchell's Speech of January, 1909	103-104
Mitchell's Toronto Speech of November, 1909	88-90
Mitchell and the Joint Editorial of February, 1909	97-103, 122-123
Gompers' Report to Executive Committee, January, 1908	75
Gompers and the "Urgent Appeal"	76-77
Gompers and the February, 1908, Editorial	76, 78-80
Gompers' Other Editorials and Publications in the <i>Federationist</i> , After the Injunctions Issued	80 <i>et seq.</i>

	Pages.
Gompers and the Circulation of the Sulzer Speech	80
Gompers and the Circular Letter of April 30, 1908	81
Gompers' Speech of April 19, 1908....	82
Gompers' Speech of May 1, 1908.....	82-83
Gompers' Speech of November, 1908...	94-96
Gompers' Report to Toronto Conven- tion, November, 1909	86-88, 90
Gompers and the Joint Editorial of Feb- ruary, 1909	97-103, 122-123
Gompers, Admissions by, on Cross-Ex- amination	115-122
Morrison and the "Urgent Appeal"....	76, 78-80
Morrison, Circulation, After the Injunc- tion of November, 1907, Proceedings.	105-106
Morrison, Circulation of the Sulzer Speech	80
Morrison, Circulation of the Circular Letter of April 30, 1908.....	87
Morrison and the Joint Editorial of Feb- ruary, 1909	97-103
IX. Appellants' Claim of Purgation:	
Made First in This Court.....	123, 125
No Pretence or Semblance of Purgation in Answer	123
Invitations by Committee, and by the Court, Rejected	123-125
The Law as to Purgation	126-127
X. The Jurisdiction Assumed by the Court of Appeals to Punish the Contempt....	128

TEXT BOOKS CITED.

Bacon's Abridgement	49
Decennial Digest	58
6 Encyc. of Law	58
Hawkins' Plea of the Crown	58

TABLE OF CASES.

	Page.
Albany Bank vs. Schemmerhorn, 9 Paige, 379-80	43
American Construction Co. vs. Jacksonville R. R.,	
Anderson vs. Dunn, 6 Wheat., 204, 227	31, 40
Ballew vs. United States, 160 U. S., 187.....	129
144 U. S., 372, 382-4	20, 25
Beattie vs. People, 33 Ill., 651, 662	58
Bessette vs. Conkey, 194 U. S., 337	4, 18, 28, 31
Biddle vs. Riverton, 40 N. J. L., 289	20
Board of Councilmen vs. Deposit Bank, 127 Fed.	28
Bradley, <i>ex parte</i> , 7 Wall., 372.....	136
Brockway vs. Wilbur, 5 Johns, 356	63
Bullock vs. Westinghouse, 129 Fed., 106-7	28
Burnett vs. Douglas County, 4 Ore., 388	20
Callan vs. Wilson, 127 U. S., 540	39
Cartwright's Case, 114 Mass., 230, 238.....	41, 59, 126
Chadwick, <i>in re</i> , 109 Mich., 597	42, 46
Chetwood, <i>in re</i> , 165 U. S., 443, 462	18, 26
Christensen, <i>in re</i> 194 U. S., 458	28, 31
Chiles, <i>in re</i> , 22 Wall., 157	3, 28, 127
Consolidated Rendering Co., <i>in re</i> , 8 Vt., 63....	136
Continental Gin Co. vs. Murray Co., 162 Fed.	
Rep., 873	28
Cooper's Case, 32 Vt., 253, 257	41
Dale, <i>et al.</i> , vs. Rosevelt, 1 Paige Ch., 35	62
Debs, <i>in re</i> , 158 U. S., 564, 573; 159 U. S., 251...	25, 27, 28
Dews vs. Wilcoxon, 18 Fla., 531, 547	20, 21
Doyle vs. London Co., 204 U. S., 599	18
Dyer vs. Lowell, 30 Me., 217	20
Eilenbecker vs. Plymouth County, 134 U. S., 37-8	41
Fanshaw vs. Tracy, 4 Biss., 495, 499	42
Fiske, <i>ex parte</i> , 113 U. S., 713, 718	18
Forsythe vs. Hammond, 156 U. S., 506, 512-15	20

Table of Cases Continued.

v

	Page.
Goddard vs. State, 12 Conn., 448	50
Gompers vs. Buck Stove & Range Co., 33 App. D. C., 574	57
Gompers vs. Buck Stove & Range Co., 221 U. S., 418	17
Gordon vs. Commonwealth, 141 Ky., 461	59
Gordon vs. Ogden, 3 Pet., 33, 35	130
Gould vs. Sessions, 67 C. C. A., 367	28
Hagerty vs. People, 6 Lans., 332, 346	53
Hay, etc., Works, in Matter of, 22 App. Div. (N.Y.), 87, 91	62
Hayes vs. Fisher, 102 U. S., 121	18, 25
Hendryx vs. Fitzpatrick, C. C., 19 Fed., 810, 813	30
Herman vs. State, 54 Neb., 626	51, 59
Hugeley Mfg. Co. vs. Cotton Mills, 184 U. S., 290, 295	26
Hurley vs. Commonwealth, 188 Mass., 443	59
Illinois Central R. R. Co. vs. Turrill, 110 U. S., 301, 304	130
Interstate Commerce Commission vs. Brimson, 155 U. S., 5	41
Jones vs. Mould, 151 Ia., 599, 607	61
Kreplik vs. Couch Patents Co., 190 Fed Rep., 565	29
Lasley vs. D. C., 14 App. D. C., 457, 414	52
Lau Ow Bew, 141 U. S., 582, 587	20
Lesser vs. People, 150 Ill., 424	42
Manchester vs. Massachusetts, 139 U. S., 262-3. .	39
Matherson vs. Hanna-Schoellkopf, <i>et al.</i> , 122 Fed., 836	61
Merchants' Stock & Grain Co. vs. Board of Trade, 201 Fed., 20	45
Merrimac Savings Bank vs. Clay Center, 219 U. S., 535	28

	Page.
Middlebrook vs. State, 43 Conn., 267	42, 64
Mulee, <i>in re</i> , 7 Blatch., 23, 25	59
McClelland vs. Carland, 217 U. S., 277, 279	18, 26, 27
New Orleans vs. Steamship Co., 20 Wall., 387 ..	18
Nevitt, <i>in re</i> , 117 Fed. Rep., 455-8	45, 59
People vs. Campbell, 152 N. Y., 51	20, 21
People vs. Sponsler, 46 N. M., 459, 462-3	50, 55
People vs. Canvassers, 74 Tenn., 179, 189	63
People vs. Wilson, 64 Ill., 195	66
Pierce vs. U. S., 37 App. D. C., 582, 223 U. S., 732-3	126
Raymond vs. U. S., 26 App. D. C., 250	130-132
Rogers Mfg. Co. vs. Rogers, 38 Conn., 121	136
Reg. vs. Willetts, <i>et al.</i> , 7 Adolph & Ellis, 516 ..	20, 21
Robinson, <i>ex part</i> , 19 Wall, 505-10	40
State vs. Board of County Commissioners, 98 Minn., 89	20
State vs. Chittenden, 127 Misc., 468, 495, <i>et seq.</i>	20
State vs. Trenton, 60 N. J. Law, 402	20
Smith vs. Manser, 60 N. J. Law, 249	20
State vs. Moore, 84 Mo. App., 11, 17	20
State vs. Heege, 37 Mo. App., 338, 348	21
State vs. Judge, 32 La. An., 315	22
State vs. Horner, 16 Mo. App., 194-5	42
State vs. Matthews, 37 N. St., 455,	43
Savin, <i>in re</i> , 131 U. S., 278	44
Sessions vs. Gould, 67 Fed., 1001	42
State vs. Morrell, 16 Ark., 384	46
State vs. Whitlock, 41 Ark., 403, 405-7	50
State vs. Ashley, 1 Ark., 279, 303	51
Stewart vs. State, 140 Ind., 7	51
State vs. Hewlett, 124 Ala., 471	53
State vs. Kelm, 79 Mo., 515	53
State vs. Shortell, 93 Mo., 121	53
State vs. Kyle, 166 Mo., 287, 303	53

Table of Cases Continued.

vii

	Page.
State vs. Frew, 24 W. Va., 460, 461	60
State vs. Betch, 23 Minn., 411	61
State vs. Roby, <i>et al.</i> , 142 Ind., 168, 188-9	64
State vs. Howell, 80 Conn., 668, 671	64
Terry, <i>ex parte</i> , 128 U. S., 303	41
Taylor vs. Goodridge, 25 Tex. Civ. App.	46
Thomas, <i>ex parte</i> , 10 Mo. App., 24, 25	51
Telegram Newspaper Co. vs. Commonwealth, 172 Mass., 296	66
U. S. vs. Dickinson, 213 U. S., 92, 101	18
U. S. vs. Kissell, 218 U. S., 601, 607	38
U. S. vs. Hudson, <i>et al.</i> , 7 Cranch., 32	39
U. S. vs. Britton, 108 U. S., 206	39
U. S. vs. Coolidge, 1 Wheat, 415	39
U. S. vs. Eaton, 144 U. S., 687	40
Una vs. Dodd, 38 N. J. Eq., 460	44
U. S. vs. Anonymous, 21 Fed., Rep.	44
U. S. vs. Ship, 203 U. S., 563, 574	126
Washington Abstract Co. vs. Stewart, 9 Idaho, 376, 380-1	20
Whitney vs. Dick, 202 U. S., 132	26
Watson vs. William, 36 Miss., 331-41	41
Wood, <i>in re.</i> , 82 Mich., 75	51
Worden vs. Searls, 121 U. S., 27	3, 5

IN THE
Supreme Court of the United States

OCTOBER TERM, 1913.

No. 640.

In Re SAMUEL GOMPERS, JOHN MITCHELL AND FRANK
MORRISON, RESPONDENTS, PLAINTIFFS IN ERROR AND
APPELLANTS.

BRIEF BY COMMITTEE.

STATEMENT.

This case is here upon appeal and upon a writ of error from a judgment of the Court of Appeals of the District of Columbia reversing, to the extent, only, of modifying the punishment, three separate judgments of the Supreme Court of the District, in three separate proceedings, one against each of the appellants, adjudging them severally to have been guilty of a contempt of that court and senten-

cing them respectively to imprisonment therefor. The judgments of the Supreme Court are to be found in the Record at pp. 131, 170 and 204. The causes were by stipulation (Rec., pp. 170, 205), heard in the Court of Appeals upon a single bill of exceptions, and assignments of error in that court, identical in the three cases, will be found at pp. 132-4, 167-8, and 206-7. The cases, from the beginning to the last entry in the Supreme Court of the District, were entitled "*In Re Samuel Gompers*," "*In Re John Mitchell*," and "*In Re Frank Morrison*" (Rec., pp. 2, 135, 172, 747), which title by some unexplained process was changed in the Court of Appeals to "*Samuel Gompers, John Mitchell and Frank Morrison, Appellants, vs. United States*." The citation, upon which the jurisdiction here depends, was issued to the United States, and accepted, not by the United States, but (Rec., pp. 794-5) by "The Committee Appointed by the Supreme Court of the District of Columbia." The case is here, also, upon cross-petitions for certiorari by the Supreme Court of the District of Columbia and by the respondents, being cause No. 574, October Term 1912, not yet passed upon, in addition to the allowed applications by the respondents for a writ of error (Rec., pp. 791-2), and also for an appeal (Rec., pp. 792-6). Whether the case can be reviewed by this Court under any of these applications, and, if so, under which of them, is one of the important questions presented.

THE FACTS.

On May 15, 1911, this court, for reasons set forth in its opinion (221 U. S., 418), reversed the judgment of the Court of Appeals of November 2, 1909 (33 App. D. C., p. 315), affirming sentences of imprisonment which had been imposed upon the respondents by the Supreme Court of the

District in former contempt proceedings against them, on December 23, 1908 (33 D. C. App., 516), and directed that court to remand those proceedings to the lower court with instructions to dismiss them,

“but without prejudice to the power and right of the Supreme Court of the District of Columbia to punish, by proper proceedings, contempt, if any, committed against it.”

In taking that course, this court followed closely its former footsteps in *Worden vs. Searls*, 121 U. S., 27, referred to in the opinion, in which case, on March 28, 1887, *more than four years after the offenses referred to had been committed*, it made the following decree:

“The final decree of the Circuit Court, and the orders of March 6, 1882, and October 9, 1882, are reversed, and the case remanded to that court with the direction to dismiss the bill with costs, but without prejudice to the power and right of the Circuit Court to punish the contempt referred to in those orders, by a proper proceeding. The preliminary injunction was in force until set aside. (See *in re Chiles*, 22 Wall., 157.)”

In the course of its opinion, 221 U. S., pp. 449-451, this Court, with the history of the acts of these respondents then before it, spoke thus of the duty and power of the lower court:

“There was therefore a departure, a variance, between the procedure adopted and the punishment imposed when, in answer to a prayer for equitable relief in the equity case, the court imposed a punitive sentence, appropriate only to a proceeding at law for criminal contempt. The result was as fundamentally

erroneous as if in an action of *A vs. B* for assault and battery the judgment entered had been that the defendant be confined in prison for twelve months.
* * *

"While it is to be sparingly used, yet the power of courts to punish for contempt is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed upon them by law. Without it, they are mere boards of arbitration, whose judgments and decrees would be only advisory.

"If a party can make himself a judge of the validity of orders which have been issued, and by his own acts of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery.

"This power has been uniformly held to be necessary to the protection of the courts from insult and oppression while in the ordinary course of its duties, and to enable it to enforce its judgments and orders necessary to the due administration of law, and the protection of the rights of suitors. *Besette vs. Conkey*, 194 U. S., 324, 333.

"There has been general recognition of the fact that the courts are clothed with this power, and must be authorized to exercise it, without referring the issues of fact or law to another tribunal, or to a jury in the same tribunal. For if there was no such authority in the first instance, there would be no power to enforce its orders if they were disregarded in such independent investigation. Without authority to act, promptly and independently, the courts could not administer public justice or enforce the rights of private citizens. *Besette vs. Conkey*, 194 U. S., 337.

"Congress, in recognition of the necessity of the case, has also declared (Rev. Stat., Sec. 725), that the courts of the United States 'shall have power to punish by fine and imprisonment contempts of their authority' * * * including 'disobedience * * *

by any party to any lawful order * * * or said courts.'

"When the main case was settled, every proceeding which was dependent upon or a part of it was also necessarily settled, of course without prejudice to the power and right of the court to punish for contempt by proper proceedings. *Worden vs. Scarls*, 121 U. S., 27."

Thereupon, on May 16, 1911, the Supreme Court of the District of Columbia, by Mr. Justice Wright, one of its members, to whom the matter was referred by Mr. Justice Gould, another member of that court, for a sufficient reason stated (Record, p. 1), made the following order:

"In the matter of Samuel Gompers, John Mitchell and Frank Morrison:

"It appearing to the court that there is reason to believe that Samuel Gompers, John Mitchell and Frank Morrison are guilty of contempt of the Supreme Court of the District of Columbia in wilfully violating the terms of an order of injunction issued by the court on or about the 18th day of December, A. D. 1907, in the cause numbered Eq. 27,305, and entitled *The Buck Stove and Range Co., plaintiff, vs. The American Federation of Labor, Samuel Gompers, et al., defendants*, it is ordered: That J. J. Darlington, Daniel Davenport and James M. Beck, Esqs., be and they are hereby appointed, authorized and empowered to inquire whether there is reasonable cause to believe the said persons guilty as aforesaid. And if yea, they are hereby empowered and directed, forthwith, to prepare, file, present and prosecute against the persons hereinbefore first named, charges of contempt of court: to the end that the authority of the court be established, vindicated and sustained." (Rec., p. 2.)

The persons named as committee in the order proceeded to perform the task imposed upon them, and on June 26, 1911, made to the court a separate report, verified by the affidavit of one of the committee, as to each of the defendants. The reports are too long to be inserted here; that as to Gompers will be found at pp. 2 to 19, Record, that as to Mitchell at pp. 135 to 145, and that as to Morrison at pp. 172 to 182. After setting out in substance, in each report, the injunction *pendente lite*, and the final decree making it permanent, without modification even in language, as issued in the said equity cause No. 27,305, the committee reported that there was reasonable ground to believe, and they therefore charged, that each defendant was guilty of contempt in wilfully violating the terms of the injunctions in certain specified particulars set out in the several reports. Each report concluded with the statement that the defendant named therein had asserted, and perhaps had believed, that, with regard to the several acts, statements and publications set forth in the report so done and made by him, the injunction was not binding upon him because of what he claimed to be his Constitutional right of free speech and free press, and the committee therefore suggested that, since such contention had now been determined by the Supreme Court in the former proceedings to be unfounded, he might be prepared to make such acknowledgment, apology and assurance of future submission to the court as would sufficiently vindicate the dignity of the court and the law; but that should such acknowledgement, apology and submission not be forthcoming, after due notice and opportunity, the course necessary to be pursued to maintain its dignity and due respect for and obedience to the law was respectfully submitted to the court for its consideration. The injunctions, *pendente lite* and permanent, referred to in each re-

port, were attached thereto as Exhibits A and B (Record, pp. 16-19).

As shown by the Record, the following motion for a modification of the preliminary injunction had been made by the defendants on January 10, 1908, shortly after its issuance, which the court denied (Record, p. 608), the motion having been as follows:

"In the Supreme Court of the District of Columbia, Equity 27,305, *Buck Stove and Range Co. vs. American Federation of Labor, et al.*

"Now come the defendants, by Ralston and Siddons and T. C. Spelling, their solicitors, and move the court to amend and correct the order passed herein on December 18, 1907, granting an injunction *pendente lite*, in the following respects and for the following reasons:

"1. The said order is erroneous in that it is made to run until the final decree in said cause, instead of until the further order of the court.

"2. Said order is erroneous in that, by its terms, it may be construed to enjoin the defendants from uniting together to agree not to patronize the plaintiff's product.

"3. The said order is erroneous in that it might be construed to prevent the defendants and their associates from saying to others that they had united and combined not to patronize the products of the plaintiff.

"4. The said order is erroneous in that it might be construed to enjoin the defendants from announcing to others that they have united and combined not to deal with others who would deal with the plaintiff or purchase his product.

"5. The said order is erroneous in that it abridges freedom of speech of all the defendants, which is protected by the first amendment to the Constitution of the United States.

"6. The said order is erroneous in that it abridges

freedom of the press of all the defendants, which is protected by the first amendment to the Constitution of the United States."

Upon the filing of the reports of the Committee, on June 26, 1911, the Supreme Court of the District issued against each of the defendants, separately, a rule to show cause at a time specified therein why he should not be judged to be in contempt in wilfully violating the terms of the injunctions issued by it in said cause, and be punished for the same (Record, pp. 19, 146, 182). Each of the defendants appeared in response to the rule, and on July 17, 1911, by his attorneys (Record, pp. 21, 148, 185), moved the court to set aside the report submitted by the Committee against him, for the reason that the order appointing said Committee to act in the matter called for the exercise of judicial discretion, and that no one of the Committee was in a position to exercise, and did not exercise, such discretion; that each of them had repeatedly, prior to his appointment, expressed in positive terms his conviction of the guilt of the respondent of the charges formulated by them against him, and as evidence thereof submitted extracts from an alleged stenographic report of the arguments of the persons comprising the Committee, during the former proceedings. He further alleged that the members of the Committee bore professional relations toward the plaintiff in the former suit against him, and towards others, which prevented them from acting judicially as a Committee, which facts he offered to prove by members of the Committee. These motions, verified by the respective defendants, appear in the Record at pp. 26, 148 and 185.

In reply two members of the Committee, Messrs. Darlington and Davenport, filed affidavits disclaiming all prejudice toward the several defendants, and denying the pro-

fessional relations alleged, the third member, Mr. Beck, being then abroad (Record, pp. 27-29, 153-154, 189-190). The court denied the motions, to which rulings the defendants severally excepted (Record, pp. 201, 202).

Thereupon each of the defendants severally filed a motion for a bill of particulars of the charges against him (Record, pp. 23, 147 and 183), to which Mr. Davenport, one of the Committee, filed an affidavit in opposition (Record, pp. 30, 147 and 188), which motions the court in the exercise of its discretion overruled.

The several defendants further moved to strike out the names of the Committee, alleging that its members had been biased by reason of their said previous employment, and to substitute the name of Clarence R. Wilson, attorney of the United States for the District of Columbia (Record, pp. 33, 156, 193); whereupon, the said Wilson having declined to act in the matter in his official capacity (Record p. 27), the court appointed him, as a member of its bar, to act as a member of the Committee in conjunction with the others in presenting and prosecuting said charges (Record, pp. 26, 27 and 34), which appointment he accepted.

Thereupon each defendant filed what he termed a plea to the charges against him (Record, pp. 33, 155, 192), averring that said charges related to acts which had occurred more than three years prior to the filing of the charges in the present proceeding, and were therefore barred by the Statute of Limitations relating to the prosecution of criminal offenses against the United States, and averring, also, that the court had been guilty of laches in failing earlier to prosecute him therefor. Each, also, filed a plea of former jeopardy (Record, pp. 38, 159, 196).

Finally, on August 19, 1911, the defendants severally

filed answers to the charges against him (Record, pp. 39, 160 and 197), which answers were identical, that of the respondent Gompers being as follows:

"For answer to the charges against him says:

"1. That he is not guilty of them nor any of them.

"2. That the matters and things complained of in paragraphs one to ten, inclusive, and in each of said paragraphs did not occur within three years before the bringing of this action.

"3. That the matters and things complained of in paragraphs one to four, inclusive, and in each of them, occurred, if at all, as the court well knew, more than three years before the commencement of this action, and that any complaint with relation thereto is barred because of laches on the part of the court or Judges, assumed or alleged to have been affected thereby.

"4. That the delay in the presentation of the charges has been so unreasonable that this defendant should not be called upon to answer them."

On October 12, 1911, each defendant filed a written motion to dismiss the charges filed against him (Record, pp. 40, 161, 197), as follows:

"The respondent moves the court to dismiss the information and charges filed against him and for cause says:

"1. There has been no proper replication filed to the plea of the Statute of Limitations presented by him, it appearing upon the face of the said information and charges that many of the actions complained of occurred more than three years before the filing of said information and charges.

"2. No pleading has been filed herein, offering any justification or excuse for the laches in bringing this proceeding on the part of the court, assumed or alleged to have been treated with contempt by the actions with

which the respondent is charged, in the aforesaid information and charges, as set forth in this respondent's answer filed herein.

"3. No pleading of any kind has been filed to account for the unreasonable delay in the institution of these proceedings as alleged in this respondent's answer filed herein.

These motions, on November 12, 1911, were denied by the court, the opinion with reference to the same being delivered by Mr. Justice Wright, concurred in by the other Justices of the court, who at his request sat with him in an advisory capacity at the hearing upon them (Record, pp. 41 to 62).

On December 15, 1911 (Record, pp. 63, 162 and 198), the following order was entered in the proceedings against each of the defendants:

"It is by the court this 15th day of December, 1911, after hearing counsel for the respective parties, ordered, That the above proceeding be, and the same hereby is, referred to Albert Harper, Esq., United States Commissioner, for the purpose of taking such testimony as may be adduced before him by the Committee and respondents respectively; that the Committee have thirty days from the date hereof within which to take testimony in chief in support of the charges preferred by it against respondent, and that the respondent have thirty days after the conclusion of the testimony on behalf of the Committee within which to take testimony on his behalf in reply, and that the Committee have ten days after the conclusion of the testimony in rebuttal, this order to be without prejudice to the right of either party to take the depositions or the affidavits, as they may be advised, of witnesses residing beyond the District of Columbia, within the time herein limited for taking testimony in the cause, or to apply to the court for leave to examine

in open court any witness or witnesses whose testimony either side may desire to have taken in that manner.

"To the granting of the above order and to each clause thereof, permitting testimony to be taken out of open court or by a Commissioner, by affidavits, or in any manner out of the District of Columbia, the respondent by Ralston, Siddons and Richardson, his attorneys in open court and at the time of the granting objects and excerpts."

On December 26, 1911, the Committee (Record, pp. 63, 163, 200) gave notice to each of the defendants that on **December 30, 1911, at 10:30 A.M.**, in Equity Court No. 2, it would proceed to take testimony in open court in support of the charges against him contained in its report as filed. On December 30, 1911, at the hour appointed, the parties assembled, and the court appointed Albert Harper, Esq., stenographer, to report the testimony of such witnesses in the proceeding as might be examined in open court, and thereupon all the testimony offered by any of the parties, in support of and in opposition to the charges, was given in open court, Justice Wright presiding at the time and Albert Harper acting as the stenographer.

When the taking of the testimony began, on December 30, 1911, counsel for respondents noted an objection to the swearing of any witness until informed whether the testimony was being taken before Mr. Harper, examiner, or before Mr. Justice Wright on final hearing, and asked that the question be passed upon by his Honor. Whereupon, upon the statement on behalf of the Committee that testimony was about to be taken in open court pursuant to the order to that effect passed by the court at the instance of counsel for the respondents, said objection was overruled and respondents' counsel noted an exception which was allowed (Record, p. 209).

During the course of the taking of the testimony in open court several objections to testimony offered by the committee were made by the respondents and the rulings thereon were reserved by the court for the final hearing. At the final hearing none of these objections were pursued. Counsel for respondents stated, upon the record, it is true, at p. 746, that there was at least one general exception, that it related to the question of the Statute of Limitations, and that it was the understanding that the testimony was taken subject to the respondents' exception and objection; but that exception and objection, as already noted, was only to the court's refusal to dismiss the charges on the ground that some of them had occurred more than three years before the Report of the Committee was filed. (Record, pp. 39-41, 160-61, 197-8.)

While the defendants were putting in their case, they introduced in evidence, and made a part of the record, the opinion of Mr. Justice Robb, on the appeal from the decree making permanent the injunction (33 App. D. C., p. 83), and also the opinion of Mr. Justice Wright, read to all the defendants when sentenced in the former contempt proceedings, as published in 36 Wash. Law Rep., p. 822 (see Record, pp. 452, 524).

The quotations from the speeches, writings and previous oral statements under oath made by the defendants contained in these two documents, read in their hearing, undisputed by them then, subsequently admitted by them in their testimony in this cause, and thus introduced in evidence by themselves, were sufficient completely to establish the facts of the contempt charged in the reports of the Committee against the defendants, respectively, had there been no other testimony.

THE ASSIGNMENTS OF ERROR.

The seventeen assignments of error in the Court of Appeals (Rec., p. 206), presented ten propositions which, grouped in their natural order, assigned error in the lower court in the following particulars:

I. (a) That the proceedings should have been, not before Mr. Justice Wright, but before that branch of the Equity Court against which a contempt was supposed to have been committed.

(b) That, at the time of the order certifying the cause to Mr. Justice Wright (Record, p. 1), there was nothing pending in the Supreme Court of the District of Columbia to be certified:—these being the propositions raised by the first of the assignments of error.

II. That it was incompetent to proceed, in a court of equity, to punish for contempt—this being the subject-matter of the second and sixteenth of the errors assigned.

III. That it was error to designate, as the Committee to formulate and to prosecute the charges of contempt, the attorneys who had represented the complainant in the suit of the Buck Stove & Range Company against Gompers and others—this being the question presented in the third and fourth assignments of error.

IV. That it was error to overrule the respondents' motions for a bill of particulars, being the fifth error assigned.

V. That it was erroneous to appoint a United States Commissioner for the purpose of taking testimony in the cause, being the eighth assignment of error.

VI. That it was error to find respondents guilty of the violation of the injunction of March 30, 1908, no violation of which, respondents claimed, had been charged, this being the twelfth assignment of error.

VII. That the court below erred in finding the respond-

ents guilty of contempt, under the evidence in the cause, this being the eleventh, thirteenth and fifteenth of the assignments of error.

VIII. That the refusal of the court below to find the charges barred by the Statute of Limitations was erroneous, this being the sixth, seventh and fourteenth assignments.

IX. That there was improper reception and improper exclusion of evidence, being assignments numbered nine and ten of the errors assigned.

X. That the punishments imposed were cruel and unusual, within the meaning and intent of the Constitution of the United States, being the seventeenth assignment of error.

Of these I, IV, V, and IX are not included in the assignments of error in this court (Rec., pp. 790-1), which add, however, a new assignment, not embraced in the assignments of error in the Court of Appeals, and perhaps, therefore, not to be considered here, namely: That the appellants by their appearance and answers purged themselves of any possible charge of contempt, and that the Court of Appeals erred in holding them guilty thereof.

If this new assignment of error, made for the first time in this court, can be regarded as in the case, there are, in this court, nine questions to be considered, namely:

I. That it was incompetent to proceed, in a court of equity, to punish for contempt, being Assignments I and XI here.

II. That the Court of Appeals erred in not sustaining the exception by the appellants to the denial by the lower court of the motion to set aside the report submitted by the Committee, being Assignment II.

III. That the Court of Appeals erred in not sustaining

the exception of the appellants to the refusal of the trial court to strike out the names of its Committee to prosecute the charges and substitute for them the United States Attorney for the District of Columbia, being Assignment III.

IV. That the Court of Appeals erred in not reversing the judgments of the trial court because of its refusal to dismiss the proceedings on the ground that no proper replication had been filed to the plea of the Statute of Limitations, being Assignment IV.

V. That the Court of Appeals erred in sustaining the action of the trial court in overruling the plea of the statute of limitations, being Assignment V.

VI. That it was error to sustain conviction of the appellants for violation of the injunction of March 30, 1908, on the ground that no violation of that injunction is charged, being Assignment VII.

VII. That the Court of Appeals erred in finding that any unlawful boycott existed after the grant of the preliminary injunction of December 27, 1907, or that any of the appellants were guilty of any act in furtherance of it after that date, being Assignment VIII.

VIII. That the evidence in the cause was insufficient to sustain the conviction of contempt, and that the conviction rests upon facts not in evidence, being Assignments VI and X.

IX. That the Court of Appeals erred in holding the appellants guilty of contempt notwithstanding their alleged purgation of the charge by their appearance and answers in the case.

If the application by the Supreme Court of the District of Columbia for certiorari be allowed, there is to be added to these propositions the following:

X. That the Court of Appeals erred in assuming jurisdiction to deny to the Supreme Court of the District of Co-

lumbia the power to determine the punishment for contempts against it, and to assume to itself the exercise of that power.

THE CASE, HOW REVIEWABLE HERE?

Preliminarily to discussion of any of these questions, it is necessary to determine whether the case is properly here, and, if so, under which of the several proceedings employed to bring it here. Is the sentence of a lower court for punishment of contempt appealable to this court? Does the writ of error lie in such a case? Has the court power to grant the writ of certiorari, either at the instance of the respondents found guilty of contempt, or at that of the court against which the offense was committed, for the protection of an inherent power, essential to its existence, from an alleged excessive and unauthorized jurisdiction of an appellate tribunal destructive of it? Unless these questions, or some of them, can be answered affirmatively, the case must of course be dismissed for want of jurisdiction.

Neither the petition of the appellants for certiorari, nor for an appeal or writ of error specifies the ground upon which the application to this court is made. The claim that the injunctions, their disobedience to which constituted the contempt found, was a violation of their constitutional rights of free press and free speech was, of course, concluded by the decision of this court in *Gompers vs. Buck Stove & Range Co.*, 221 U. S., 418. The only other conceivable ground for the applications, or for any of them, is the claim that Section 1044 of the Revised Statutes of the United States, fixing three years as the statutory period for prosecutions under indictments or informations, applies to proceedings in contempt—a claim, we submit, too remote on which to found the jurisdiction of this court in a

case like the present. This subject will be discussed later in this brief (see pp. 34-7, *et seq.*).

The allowance of the appellants' application for a writ of error and also for an appeal, of course, only removes the cases from the Court of Appeals of the District of Columbia to this Court, leaving it to be determined here whether this court may entertain jurisdiction of the cases removed.

In re Chetwood, 165 U. S., 443.

That, where reviewable at all in the appellate tribunal, the review must be by writ of error and not by appeal, is no longer open to discussion. *Bessette vs. W. B. Conkey Co.*, 194 U. S., 324, 334-8.

Proceedings in contempt are not reviewable in this court, either upon appeal or by writ of error.

In re Chetwood, 165 U. S., 443; 462.

New Orleans vs. Steamship Co., 20 Wall, 387.

Hayes vs. Fisher 102 U. S., 121.

Ex-parte Fisk, 113 U. S., 713, 718.

Doyle vs. London Co., 204 U. S., 599.

But this court may review cases of this character by certiorari, and has repeatedly done so.

In re Chetwood, *supra*.

McClelland vs. Carland, 217 U. S., 277-79.

Even certiorari, however, will not be allowed by this court for the correction of mere error, as distinguished from an excess of jurisdiction.

U. S. vs. Dickinson, 213 U. S., 92, 101.

THE APPLICATION BY THE SUPREME COURT OF THE DISTRICT OF COLUMBIA FOR CERTIORARI, PROPER.

The petition of the Supreme Court of the District of Columbia presents a proper case for the issuance of the writ

of certiorari, and review thereunder by this court of the proceedings in the Court of Appeals.

As heretofore stated, it was against the Supreme Court of the District of Columbia that the contempt was committed; and it was in pursuance of the inherent power of all courts of record to protect their dignity and vindicate their authority that the proceedings in contempt were prosecuted in that court, the convictions had and the punishment imposed. For the first time, it is believed in the history of Anglo-Saxon jurisprudence, another court has assumed a jurisdiction, not merely to ascertain whether the proceedings below were properly conducted, in accordance with law and without error, but to substitute its own judgment for that of the court offended against as to the punishment proper to be imposed. This jurisdiction, claimed under the authority to "affirm, reverse or modify" any final order, judgment or decree of the lower court, belongs to the class of questions of such public importance and gravity as, under the decisions of this court, call for the exercise of the discretionary power to grant the writ of certiorari, if the case otherwise demands its exercise. If the Court of Appeals of the District of Columbia possesses the authority here claimed over sentences imposed by the lower court in contempt, it possesses it equally with respect to all sentences in criminal prosecutions, so that every criminal case in the District of Columbia will be appealable from the Supreme Court to the Court of Appeals of the District, upon the mere question of the severity or extent of the penalty or sentence imposed by the lower court, however free from error, or from any exception, even, the record may be in all other respects. Not only so, but, since the Circuit Courts of Appeals under the Judicial Code, approved March 3, 1911, are authorized to review by appeal or writ of error all final decisions of the

District Courts, the District Court for Hawaii, the United States Court for China, Alaska, etc., not directly appealable here, the far reaching character and importance to the question is obvious. Clearly, we submit, it belongs to the class of questions presenting "peculiar gravity and general importance," and the determination of which is necessary "in order to secure uniformity of decision," in which this court deems the issuance of certiorari proper.

American Construction Co. vs. Jacksonville R. R.,
144 U. S., 372, 382-4.

Lau Oe Bee, 141 U. S., 582, 587;

Forsythe vs. Hammond, 156 U. S., 506, 512-15.

It remains to consider whether the Supreme Court of the District of Columbia possesses the requisite standing or status to apply for the writ.

The theory that only a party to a proceeding in the sense of one who is named therein, either as a plaintiff or as a defendant, possesses the requisite status to maintain a petition for certiorari, finds little support in the authorities

Burnett vs. Douglas County, 4 Ore., 388.

State vs. Board of County Commissioners, 98 Minn.,
89.

State vs. Chittenden, 127 Wisc., 468, 495, *et seq.*

Reg vs. Willets, et al., 7 Adolph & Ellis, 516.

People vs. Campbell, 152 N. Y., 51.

State vs. Trenton, 60 N. J., Law 402.

Dyer vs. Lowell, 30 Me., 217.

Biddle vs. Riverton, 40 N. J. Law 289.

Smith vs. Wanser, 60 N. J. Law 249.

State vs. Moore, 84 Mo. App., 11, 17.

Dewes vs. Wilcoxon, 18 Fla., 531, 547.

Washington Abstract Co. vs. Stewart, 9 Idaho, 376,
380-81.

If the commissioners of one parish may be granted certiorari against an order by the justice of another parish in a proceeding to which the former parish is not a party but under which a pauper is about to be removed to it, as in *Ridge vs. Willets*, *supra*; if a Forestry Commission may sue out the writ to a judgment in a case to which it was not a party on the record, because it affects the forestry interests of the state, as in *People vs. Campbell*, 151 N. Y., *supra*; if a co-tenant injuriously affected by a partition proceeding to which he is not a party is entitled to certiorari as in *Dyer vs. Lowell*, 30 Me., 217; if a taxpayer may have certiorari to revise the illegal action of the County Court in granting a liquor license in a township in which he resides, as in *State vs. Heege*, 37 Mo. App., 338, 348, and in *State vs. Moore*, 85 Mo. App., 11; if a field officer of a militia brigade may have certiorari to review a military order determining the qualification of voters in the election of a brigadier general, as in *Smith vs. Wanser*, 60 N. J. Law, 249; if an heir, neither made nor required to be made a party to a proceeding in the probate court to sell real estate for the payment of debts may have certiorari to the order of sale, as in *Drews vs. Wilcoron*, 18 Fla., 531, 547, and the like, surely a Federal Court, exercising its inherent and exclusive right to determine and impose the punishment necessary to vindicate its authority possesses the necessary status to apply for the writ when another tribunal assumes the right to deny and defeat that authority, and to render the court powerless in the premises except subject to a revisionary, overruling jurisdiction and power claimed by the former.

The Supreme Court of the District, it is true, was not a party to the contempt proceedings in the sense that the Justices composing it had any personal interest in the matter. It was a party, however, namely, the actor, in the institu-

tion of the proceedings, and in their prosecution to and including the convictions and sentences. It was its authority which was to be vindicated and its dignity which was to be protected; and, while such vindication and protection were matters of great public interest as well, the court itself was and is directly interested in the attainment of that end.

It is its essential and inherent power, recognized at common law as belonging exclusively and without interference to every court of record, which is interfered with by the judgment complained of: and it is to it that the court of Appeals proposes to remand the cause, with a mandate requiring it to vacate its own action and judgment in the premises and to substitute another in its stead, in derogation of what it contends are its legitimate rights and powers. It would certainly be a condition to be deplored if our Federal Courts are so constituted as to be without redress against unauthorized invasions of their rights, powers and duties by other tribunals of the Federal system.

It is for present purposes, of course, that the judgment of the Court of Appeals complained of is assumed to be an unauthorized invasion of the rights and powers of the lower court. Whether the claim of the latter in this regard is, or is not, well founded is a question for determination after the writ is granted. The present inquiry is, simply, whether the lower court possesses the necessary status to apply for the writ, assuming its claim to be well founded.

Precedents, precisely in point, are not altogether lacking:

In *State vs. Judge*, 32 La. An., 315, the District Court had undertaken to interfere with and disturb the exercise by the Recorder of the City of New Orleans of the jurisdiction claimed by him to determine whether a prisoner arrested upon his warrant under a criminal charge was, or was not, entitled to bail, and the question was whether the Recorder

was entitled to certiorari for the protection of his jurisdiction. The Court said:

"Objection is made to the want of interest of the relator in the subject-matter. He is not without interest in maintaining the legitimate jurisdiction of his court over a question, the decision of which the law had entrusted him with. * * * The bare question presented is whether, under the general authority to issue writs of habeas corpus, a District Judge can interfere with a recorder while exercising jurisdiction confided to him in determining whether a given offense is bailable. We are of opinion that he cannot."

So in *State vs. Judge*, 49 La. An., 1717, the District Court undertook by certiorari and prohibition to prevent a justice of the peace from exercising the jurisdiction claimed by him for the trial of a certain class of cases, whereupon the latter appealed to the Supreme Court of the State for writs of certiorari and prohibition to the District Court, which were issued. The court said:

"The question which meets us at the threshold is, whether the relator occupies such a position, and has such a legal interest in the matter submitted to us, with any authority to ask for a decision of the same at our hands, and to call into exercise the supervisory powers conferred upon us by Article 90 of the Constitution;"

and, after reciting the argument against the allowance of the writs, that it was for the real parties interest and not for the justice of the peace to complain if their rights were illegally interfered with, and that the justice was improperly championing the rights of third parties, the court said further:

"It is certainly a very unusual proceedings for the judge of a court whose jurisdiction and authority in certain proceedings before him have been called in question by certiorari and a prohibition issuing from the court claiming to have appellate jurisdiction from him of the matters complained of in the writs, to have recourse, himself, to the Supreme Court for relief from such writs by counter-writs of certiorari and prohibition to the latter court. Ordinarily the parties to the suit or suits in which the proceedings are stayed take action themselves. The reasons assigned by the justice for his course is that 'he is interested officially as a State official in having his legal jurisdiction, when illegally interfered with, maintained; that the method of proceeding resorted to will avoid the bringing of a multiplicity of suits, and that he has a personal interest in the matter of the costs of the various suits in his court.' Article 90 of the Constitution declares that 'the Supreme Court shall have control and general supervision over the inferior courts. They shall have power to issue writs of certiorari, prohibition, mandamus, quo warranto and other remedial writs.' * * * It is our province and duty under this delegation of authority to prevent clashing touching their respective jurisdictions by settling disputed questions in respect thereto, and to keep the different courts, though acting inside of their general jurisdiction, from acting outside or beyond the law. The circumstances or conditions under which our powers in those cases should be called into exercise were not fixed by the Constitution, but left to be determined by this court in such manner as would best, in its opinion, subserve the object and purposes of the grant;"

and the court accordingly held that, whenever an inferior court, acting within what it claimed to be its exclusive jurisdiction, found itself interfered with therein by the claim of an appellate, supervisory

jurisdiction over it touching the matters before it, the inferior court was justified and authorized in calling the matter to the judicial attention of the Supreme Court, to the end that the latter might take such action in the premises as would insure the performance of their respective duties by the different judicial tribunals of the State, and the observance by them of the limitations upon their respective powers.

Upon the foregoing principles and authorities, we submit that, very clearly, the Supreme Court of the District of Columbia is entitled to present to this court its application for certiorari, and that, as above stated, the questions presented are of an importance and gravity which justify its allowance. And we submit, further, that this court, itself, without regard to the existence or non-existence in the Supreme Court of the District of Columbia of a status for the purpose in hand, may grant the writ and bring this important question before it for determination, affecting as it does the relative rights, powers and jurisdiction of every Federal Court of first instance, and of every court of an intermediate appellate jurisdiction.

"By Section 14 of the Judiciary Act of September 24, 1789 (1 Stat. 81 c. 20) carried forward as Section 716 of the Revised Statutes, this Court, and the Circuit Courts and District Courts of the United States, were empowered by Congress to issue all writs not specifically provided for by the Statute, which may be agreeable to the usages and principles of law; and under this provision we can undoubtedly issue writs of certiorari in all proper cases. *American Construction Co. vs. Jacksonville R. R.*, 148 U. S., 372, 380; and although * * * judgments in proceedings in contempt are not reviewable here on appeal or error, *Hayes vs. Fisher*, 102 U. S., 121; *In re Debs*, 158 U. S., 564, 573; 159 U. S., 251, they may be reached by certiorari in

the absence of any adequate remedy. The writ of certiorari will be allowed to bring up the record, so that the order adjudging Chetwood and his counsel in contempt for being concerned in suing out the writs of error, and directing them, or either of them, to refrain from prosecuting the one writ in the name of the bank, and to dismiss the other, may be revised and annulled." *In re Chetwood*, 165 U. S., 443, 461.

So in *McClelland vs. Carland*, 217 U. S., pp. 277-9, this court, quoting in part the foregoing extract from *in re Chetwood* and citing, also, *Whitney vs. Dick*, 202 U. S., 132, adds:

"While the power to grant this writ will be sparingly used, as has been frequently declared by this court, we should be slow to urge a conclusion which would deprive the court of the power to issue the writ in proper cases to review the action of the Federal Courts inferior in jurisdiction to this court.

"In all cases where the decree or judgment of the Circuit Court of Appeals is made final by the statute, an appeal does not lie, but any such case may be brought here 'by certiorari or otherwise.' The latter words add nothing to our power, for, if some other order or writ might be resorted to, it would be *ejusdem generis* with certiorari. The writ is an equivalent of an appeal or writ of error as declared by the statute, and it is issued in the discretion of the court. *Hugely Mfg. Co. vs. Cotton Mills*, 184 U. S., 290, 295."

"The powers of this court to issue writs of certiorari is not limited to the Court of Appeals Act. Section 716, of the Revised Statutes of the United States provides: 'The Supreme Court and the Circuit and District Courts shall have power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their re-

spective jurisdictions, and agreeable to the agreed principles of law.' " *McClelland vs. Carland*, 217 U. S., 268, 277-8.

Section 716 of the Revised Statutes is carried forward as Section 262 of the Judicial Code of March 3, 1911.

I.

If the jurisdiction of this court is established, the first of the questions presented is, whether it was competent to proceed, in a court of equity, to punish for criminal contempt.

The theory of this objection, as disclosed by the discussion of it at pp. 101-2 of the brief for respondents, is that, while courts of equity have power to punish for what have been designated civil contempts, in order to afford relief to a party litigant, they are without power to punish those who defy and deride their judgments, orders, decrees or commands, or to establish, vindicate and sustain their authority. *In re Debs.*, 158 U. S., 564 is cited in support of this contention as a case in which a court of equity exercised its power of punishment simply to protect litigants— notwithstanding the fact that, in that case, the punishment consisted of absolute jail sentences for definite, fixed periods of time, precisely as in the case at bar, and not of sentences of imprisonment to continue until the court's orders should be obeyed, or the rights of the adverse litigant complied with, or the like, as in the case of civil or remedial contempt sentences.

The learned counsel for the respondents have not been able to cite any authority for the proposition that courts of equity have not the inherent power which, under all the authorities, from ancient times, belongs to all courts to punish disobedience and insult to their dignity and authority. On the contrary, in every instance in which a punitive sentence has been imposed for contempt of the equity courts, the

proceeding has been instituted and prosecuted to the end in those courts. The origin and the universality of this inherent power, in all courts, and the necessity for it, is recognized by the authorities upon the subject, many of which will be cited in other connections in this brief.

“The sole adjudication of contempts and the punishment thereof belongs, exclusively and without interference, to each respective court” (*In re Debs*, 158 U. S., 595).

Even in original punitive proceedings, in this Court, for the violation of its orders and contempt of its authority as a court of equity, they have been *in equity*.

In re Chiles, 22 Wal., 158.

Merrimac Savings Bank vs. Clay Center, 219 U. S., 535.

And the same is true of all the cases of like character which have come to this court from the lower courts, on writs of error or otherwise.

Besette vs. Conkey, 194 U. S., 328.

In re Christensen, 194 U. S., 458.

In re Debs, 158 U. S., 595.

The same is true of all the cases in the U. S. Circuit Courts.

Continental Gin Co. vs. Murray Co., 162 Fed. Rep., 873.

Gould vs. Sessions, 67 C. C. A., 367.

Bullock vs. Westinghouse, 129 Fed., 106-7.

Board of Councilmen vs. Deposit Bank, 127 Fed.

Inspection of the records in this court shows that *In re Chiles*, and in *Merrimac Savings Bank vs. Clay Center*, in

which the proceedings in contempt were original, the proceedings were entitled "In Equity."

The principles underlying this subject have been recently considered by the Court of Appeals for the First Circuit in *Kreplik vs. Couch Patents Co.*, 190 Fed. Rep., 565, which is of especial interest for its full and intelligent discussion of the Gompers case, 221 U. S., 565. In this case the court below, sitting in equity, had adjudged the accused guilty of contempt and imposed a fine for the benefit of the complainant, and at the same time and in the same proceeding ordered that he be imprisoned for 10 days. The case was before the Court of Appeals upon a writ of error, and three questions were discussed by it in the opinion: First, did the court, sitting in equity, err in imposing a *fine* for the benefit of the complainant. Secondly, did the court, sitting in equity, err in ordering the defendant to be imprisoned for 10 days, and, Thirdly, was it error for the court, sitting in equity, to pass upon both the punitive and remedial elements in one proceeding. Each of these questions was answered in the negative. The court recognized the right of the Circuit Court, sitting in equity to vindicate its authority and punish for the contempt thereof, and we quote from the opinion as follows:

"Was it error for the Circuit Court to pass upon both the punitive and remedial elements in one proceeding?"

"The Circuit Court imposed a punitive sentence. By its ruling it allowed the criminal element to dominate the proceeding. It also made an award of compensation for the complainant. Of this latter action the defendant complained and said that it was error for the court to take such action. We have already discussed the award of compensation, standing by itself, and have found it to be free from error. It is our duty

now to briefly consider the question presented by the Circuit Court having taken action upon both the punitive and civil aspects of the case in *one proceeding*, although there may be doubt whether this question fairly arises upon this writ of error.

"In discussing the action of the court upon the criminal side we have found that the mutual understanding of the parties was of great and, perhaps, determining force. Here again, upon the remedial side, the understanding of the parties is of great moment. The court shows that, while the defendant requested the court to rule that the case was a criminal one, the defendant also requested a ruling which pertained simply and only to the civil side of the case. It appears then that both parties assumed that, while the civil rights of the parties were involved, the court was asked to proceed further to vindicate its authority. The Circuit Court made its two awards, its compensatory award and its punitive award, in one proceeding. In doing so, it followed the practice of the courts in this circuit and in other circuits. This practice had no less a sanction than that of Judge John Lowell and of Judge Nelson in *Hendryx vs. Fitzpatrick* (C. C., 19 Fed., 810, 813), where the court in this circuit held that the process of contempt had two distinct functions, one criminal, to punish for disobedience, and the other civil and remedial; that in patent causes the practice has been to combine the two under a proper proceeding, and to order punishment if it is thought proper, and to indemnify the plaintiff if it is thought proper, or to do both if justice requires; that in patent causes, it has been usual to embrace the public and private remedy in one proceeding. This has been held to be the proper practice by Mr. Justice Miller in *re Chiles*, 22 Wall., 157, 168.

"In the Gompers case, the court has nowhere said that this practice of the several circuits in patent causes is improper or illegal. Under the principle announced in that case, it must, of course, appear in a cause in

equity that, before imposing a sentence for criminal contempt, the court distinctly gave the defendant his day in court and allowed him a full and fair hearing upon a criminal charge. In that case the Supreme Court recognizes that the practice with reference to contempt proceedings has been unsettled. It does not condemn the practice of the Circuit Court in the several circuits in equity cases in passing upon the punitive and civil aspect of the case in one proceeding. It does, however, hold with great force and clearness that a citizen should not be compelled to face a criminal charge without being fully advised that he is facing such a charge. We do not find that the Supreme Court has ever said that any particular form of proceeding is required, providing the defendant is left in no doubt as to what charge is made against him. In the *Gompers* case, the court further points out that, in *United States Revised Statutes*, Sec. 725 (*U. S. Comp. St.*, 1901, p. 583) Congress has declared the power which already inheres in courts to punish contempts of their authority. It seems clear that by statute the Congress did not undertake to limit the courts in the right which they already possessed to act promptly and independently in any competent proceeding for the purpose of enforcing their judgments and punishing disobedience. The Supreme Court has long since taken the view that such questions as the one in question are legislative assertions of this right of courts; that this right is incidental to the grant of judicial power, and could have been exercised without the aid of statute; that such legislative grant of power can be considered either as an instance of abundant caution, or a legislative declaration that the power of punishing for contempt shall not extend beyond its acknowledged limits of fine and imprisonment. *Anderson vs. Dunn*, 6 Wheat, 204, 227; *Beckett vs. Conkey* 194 U. S., 327. In *re Christensen Engineering Co.*, 194 U. S., 458, the Supreme Court further said that, where a court is proceeding in vindication of its authority, this element dominates the

proceeding, and is reviewable by the Circuit Court of Appeals on writ of error. It is clear, then, that in a proceeding where both the remedial and punitive elements are brought before the court, the criminal elements must control. But in saying that the criminal element dominates the proceeding, the Supreme Court does not say that such domination excludes the remedial element from being considered, or prevents a judge in a case like the one before us from vindicating the court's authority by punitive action, and at the same time applying remedial relief.

"In the case at bar, the Circuit Court gave the defendant a full hearing upon all the civil and remedial aspects of the case at the same time that it gave him a trial upon the charge of criminal contempt. The defendant fully understood that he was being tried upon the remedial aspects of the case as well as upon a criminal charge. He asked for rulings touching both aspects of the cause. There was no necessity for the Circuit Court to delay the administration of justice by dividing the two elements, and insisting upon separate proceedings in each element. If there had been such necessity, the court might have proceeded with the remedial side of the case, and have then granted a motion to show cause at a further hearing why the defendant should not be tried upon the charge for criminal contempt. But in the proceeding before it the Circuit Court found that, upon a proper petition, upon ample notice, and with a full understanding, the parties might properly be heard upon both elements, and it allowed the criminal element to dominate the proceedings.

"Under the principles of the *Gompers* case, and under the prevailing practice of this circuit, we find no error in the action of the Circuit Court."

II. III.

The second and third questions in natural order, raised by the second and third assignments of error here, is to

the personnel of the Committee appointed by the court to formulate and present the charges of contempt, the ground of objection being that the members of the Committee so appointed had been the attorneys for the Buck Stove & Range Company, the complainant in the litigation in connection with which the contempt was committed. Even if the proposition on which this objection rests (Appellants' Brief, pp. 101-102), namely, that the duty of inquiring into and presenting charges of contempt is a "judicial function," for which no authorities are or can be adduced, were true, the allegation of alleged bias, bitterness, prejudice and incapacity to perform fairly the duties imposed by the court's order presents a question of fact, determined by the court below upon consideration of the affidavits of the respondents in support of the charges (Rec., pp. 21-3) and the affidavits in reply (Rec., pp. 27-30), which questions of fact are not reviewable in the appellate court.

It will be further noted (Rec., pp. 33, 34) that, the respondents having requested the substitution of the Attorney of the United States for the District of Columbia to prosecute the charges, and the incumbent of that office having declined to act in his official capacity, the court, complying as far as it was possible to do so with the professed desire of the respondents in that regard, appointed the United States District Attorney, in his capacity as a member of the bar, a member of the Committee, "to present to the court the said charges according to right and justice in the premises."

At p. 102 of the opposing brief, reference is made to the fact that, in the trial court, the proceedings were brought "under an equity caption." No objection based on the caption was made in the trial court, nor is error on this ground to be found in the assignments of error in the Court of

Appeals or here. See *in re Chiles, supra*, p. 28; *Gompers vs Buck Store & Range Co.*, 221 U. S., p. 446, *et passim*.

IV.

The fourth question, raised by the fourth assignment of error in this court, is whether there was error in the refusal to dismiss the proceedings on the ground that no proper replication had been filed to the plea of the Statute of Limitations. The plea on behalf of the respondent Gompers (Rec., p. 33), repeated in his answer (Rec., p. 39), professed to apply to the first ten, only, of the sixteen charges presented; the motion (Rec., p. 40) was to dismiss, not the ten charges, but all of them, for the omission to file a replication to this plea, so that, even if proceedings in contempt should have been treated as requiring the same formal pleading as an ordinary common law action, the motion was properly denied. It is elementary, however, even as to the ten charges, that proceedings in contempt are summary, and that the utmost requirement in them is that sufficient notice be given of the charge which the respondent is called upon to answer, and due opportunity afforded to make his defense. The same observations as to the point now under consideration apply equally to the defendants Mitchell and Morrison, whose pleas will be found at pp. 155 and 192 of the Record.

V.

The fifth question, raised by the fifth and ninth assignments of error, is, did the court err in its alleged refusal to hold the charges barred by the Statute of Limitations, which prohibits prosecutions for offenses, not capital, under indictments or informations not found or instituted within three years after commission of the offense.

With regard to these assignments of error, no basis for them, we submit, is to be found in the Record. The opposing brief, it is true, asserts that the Statute of Limitations was "a defense which was at every moment of the proceedings insisted upon and brought to the attention of the court in every possible way down to the moment of its decision. It was overruled by the opinion of the court (Record, p. 41), and disregarded and overruled whenever presented at a later period in the case." On the contrary, the court was in no instance called upon to rule upon this question, in no instance did rule upon it, and in no instance is there an exception in the Record which properly, or at all, presents it. Its entire history in the Record is as follows, the Gompers' case being taken for the purpose of illustration—those of Mitchell and Morrison being in all respects identical:

At page 39, the answer of Gompers avers, "That the matters and things complained of in paragraphs one to ten inclusive, and in each of said paragraphs, did not occur within three years before the bringing of this action." This was followed by his motion, at p. 40, to dismiss all the charges because there had been "no proper replication filed to the plea of the Statute of Limitations presented by him, it appearing upon the face of the information and charges that many of the actions complained of therein occurred more than three years before the filing of said information and charges." This motion, to dismiss the sixteen charges for want of a replication to a plea affecting only ten of them—if a replication was necessary at all in a proceeding of this nature—was denied by the order of the court at pp. 40-1 of the Record, followed at p. 41 by the entry, "To the making of the above order, and to each and every paragraph thereof in their several order, the above named respondent by his counsel at the time in open court objects and excepts." The

subject is next referred to at page 353, where, upon the offer in evidence of an editorial by Mr. Gompers of March, 1908, being the sixth of the first ten charges referred to in the plea of limitations, his counsel stated: "Of course it will be understood that all of the evidence which has been introduced is subject to the exception originally reserved by us affecting the question of limitations. In other words, all the events complained of are barred by the Statute of Limitations, and all the offers to prove tend to show, if anything, events which were barred by the Statute of Limitations"—the only "exception originally reserved," or reserved at all, being the exception, at p. 41, to the court's denial of the motion to dismiss the proceedings entirely because of the absence of a replication to a plea of the statute to ten of the charges. Under an agreement, sanctioned by the court, (Rec., pp. 210-11), objections to the evidence were reserved until the final hearing except where either party called for an immediate ruling; and the only further reference to the subject of limitations, in the entire Record, is the following observation of respondents' counsel at the final hearing, at p. 746, unaccompanied by a motion to strike out or other request to rule upon the question: "There was at least one general exception presented on behalf of the respondents, and that related to the question of the Statute of Limitations, and it was the understanding that the testimony was taken subject to respondents' exception and objection."

In the opinion accompanying its denial of the motion to dismiss all the charges for want of a replication to a plea addressed to a part of them, the trial court, it is true, discussed the question whether the statute relied upon, Section 1044 of the Revised Statutes, applied to prosecutions for contempt, and, we submit, showed conclusively (Rec.,

pp. 42-59) that it did not; but no exception to the *opinion*, of course, could have been taken, or was attempted. The only ruling asked of the court, made, or excepted to was, as stated, that contained in its order at page 41 of the Record denying the motion to dismiss for want of a replication. The judgment (Rec., p. 131) was general, "that the respondent, Samuel Gompers, is guilty of a contempt of this court in wilfully violating the terms of the said injunctions," and so as to the respondents Mitchell (pp. 169-70) and Morrison (204-5).

From the foregoing, we submit, the results follow:

1. That there was in this case no ruling nor any exception upon the question whether the Statute of Limitations (Section 1044 of the Revised Statutes) applies to proceedings in contempt.
2. That, therefore, the Record presents no case in which the construction of any law of the United States was drawn in question by the defendants.
3. That, as a consequence, neither writ of error nor appeal lies, and the case must be dismissed for want of jurisdiction unless certiorari shall be allowed.

But, in the second place, if the question were here, are proceedings in contempt by courts for the vindication of their dignity and authority governed by Section 1044 of the Revised Statutes? This inquiry involves two propositions, both of which must, as the opposing brief concedes, be found in the affirmative to make the Section applicable, namely: (1) That contempt of court is a criminal offense, and (2) That it is one to be prosecuted at common law by indictment or information. To these the opposing brief adds a third contention, already considered, *supra*, pp. 27-32,

that courts of equity are without jurisdiction to punish criminal contempts, but must leave them to be redressed by the criminal courts.

If the first and second of these propositions could be answered affirmatively, the case of the respondents would not be helped. The boycott which they conspired together to continue, in violation of the injunction, was by the acts charged and of which they stand convicted continued until the Buck Stove & Range Company, deprived of the protection the courts were vainly endeavoring to extend to it, was forced to submit and thereby induce the respondents to terminate the boycott, on July 19, 1910 (Rec., pp. 643-45). The Statute of Limitations did not begin to run until that date. *United States vs. Kissell*, 218 U. S., 601, 607. But

(1) ARE CONTEMPTS CRIMES?

It is beyond dispute that, in many courts and by many able judges, a generality of expression has been indulged in with respect to contempts from which, if we ignore the well-known rule that the language of opinions is to be read in the light of the case before the court and to which they relate, an irreconcilable conflict would exist. In the cases cited at pp. 44, *et seq.*, of the brief for respondents, contempt is referred to as "a criminal offense," "a specific criminal offense," "a criminal case," and the like. In no one of these instances, however, did the case before the court present the question whether contempt is for all purposes, or for the purposes of Section 1044, or in a general sense, a crime; and, if the general expressions used in them are to be taken as establishing, or justifying, that conclusion, some highly novel and far-reaching consequences must result. Thus Article III, Section 2, Clause 3, of the Constitution of the United States provides that the trial of all crimes, ex-

cept in cases of impeachment, shall be by jury; the Fifth Amendment provides that no person shall be held to answer for a capital or otherwise infamous crime—and crimes punishable by imprisonment are infamous (*Callan vs. Wilson*, 127 U. S., 540)—unless on a presentment or indictment of a Grand Jury, except in cases not here relevant, while the Sixth Amendment provides that, in all criminal prosecutions, the accused shall enjoy the right of public trial, by an impartial jury, to be confronted with the witnesses against him, and to have the assistance of counsel for his defense. If contempt of court is a crime, in the sense here contended for, how are these Constitutional provisions to be dispensed with?

It will not do to say, as is attempted at p. 51-2 of the opposing brief, that there are large classes of criminal cases tried without a jury, because so tried at common law, and that the Constitutions, Federal and State, inaugurate no new system but simply preserve jury trials as at common law; for the reason, if there were no others, that there are no common law crimes within the jurisdiction of the courts of the United States, nor any crimes triable in them except such as are expressly created by statute. *United States vs. Hudson, et al.*, 7 Cranch, 32.

In *United States vs. Britton*, 108 U. S., p. 206, this court said: "There are no common law offenses against the United States, *United States vs. Hudson*, 7 Cranch., 32; *United States vs. Coolidge*, 1 Wheat., 415." In *Manchester vs. Massachusetts*, 139 U. S., 262-3, the court said: "The courts of the United States, merely by virtue of this grant of judicial power, and in the absence of legislation by Congress, have no criminal jurisdiction whatever. The criminal jurisdiction of the courts of the United States is wholly derived from the statutes of the United States."

And in *United States vs. Eaton*, 144 U. S., 687, the same tribunal declares, "It is well settled that there are no common law offenses against the United States."

It follows, therefore, that contempt of court is not a criminal offense, in any general sense of the term, unless it can be claimed to have been so created by a Federal statute. Such a claim, recognized as essential to their contention, was made by respondents' counsel in the court below (Rec., p. 43), declaring it to have been made criminal by Section 725 of the Revised Statutes, which indicates that courts of the United States shall, among others, have the power to punish by fine or imprisonment contempts of their authority, not to extend to any cases except misbehavior in their presence or so near thereto as to obstruct the administration of justice, the misbehavior of their officers, and the disobedience or resistance by any party, etc., to any lawful writ, process, order, rule, decree or command of such courts. The omission to renew that claim, definitely, in the brief here, would indicate that some study has since been given to the decisions of this Court upon that subject.

In *Anderson vs. Dunn*, 6 Wheat., pp. 227-8, it is said that, although the United States courts are thus vested by statutory provision with power to fine and imprison for contempts, they would have had that power without the aid of the statute, and do possess it in cases to which the statutory provision may not extend; and that the statute is simply a legislative assertion of this right incidental to a grant of judicial power, and can be considered only as an instance of abundant caution, or a legislative declaration which, so far from creating the crime, or giving jurisdiction to punish, imposes limits upon the power to punish it. So in *ex parte Robinson*, 19 Wall., 505-510, the Court declares that the power to punish for contempts is inherent

in all courts, is essential to the preservation of order in judicial proceedings, and to the due administration of justice; that, the moment courts were called into existence and invested with jurisdiction over any subject, they became possessed of this power; that the statute in question merely limits and defines it, and that whether, though in terms applicable to all courts, it can be held to impose a valid limitation upon the authority of the Supreme Court, which derives its existence and powers from the Constitution, is a matter of doubt. In *ex parte Terry*, 128 U. S., at p. 303, and again in *Interstate Commerce Commission vs. Brimson*, 155 U. S., p. 5, *Cooper's Case*, 32 Vt., 253, 257, is quoted and approved as follows: "The power to punish for contempts is inherent in the nature and constitution of a court. It is a power not derived from any statute, but arising from necessity; implied because it is necessary to the exercise of all other powers." In *re Debs*, 158 U. S., 594-5, this Court quotes *Watson vs. Williams*, 36 Miss., 331, 341, as follows: "The power to fine and imprison for contempt, from the earliest history of jurisprudence, has been regarded as a necessary incident and attribute of a court, without which it could no more exist than without a judge. It is a power inherent in all courts of record, and co-existing with them by the wise provisions of the common law." The court also cites *Cartwright's Case*, 114 Mass., 230-238, as follows: "The summary power to commit and punish for contempts tending to obstruct or degrade the administration of justice is inherent in courts of chancery and other superior courts, as essential to the execution of their powers and to the maintenance of their authority." So in *Eilenbecker vs. Plymouth County*, 134 U. S., 37-38, Section 725 of the Revised Statutes is referred to as an act of Congress "intended to limit the power of the courts to punish for contempts of its author-

ity," and not as a statutory provision creating the offense.

Not to prolong this brief by a multiplication of authorities to the same effect, as might be done indefinitely, it is believed without any instance of dissent, it must be regarded as established, first, that there are no crimes cognizable in the Federal courts except such as are created by statute, and, secondly, that contempt of court is not an offense so created. The opinions relied upon in which it is referred to as a crime, a criminal offense, and the like, read in the light of the facts before the courts which rendered them, mean no more than is expressed in other opinions, by the same courts, including the later opinions of this Court, in which they are declared to be "in the nature of criminal offenses," "*quasi* criminal," and the like. They are in the nature of a judgment convicting of a criminal offense (*State vs. Horner*, 16 Mo. App., 194-5); of a criminal nature (*Sessions vs. Gould*, 67 Fed., 1001); partake of the nature of a criminal offense (*Fanshawe vs. Tracy*, 4 Biss., 495, 499), criminal in its nature (*Lesser vs. People*, 150 Ill., 424).

Time and space forbid the multiplication of citations from the State courts upon this question. *In re Chadwick*, 109 Mich., 597, may be taken as typical of them. "Proceedings for contempt are not criminal cases within the intent and meaning of the Constitution of the United States, or of this State. If they were, then the party accused of contempt would be entitled to a jury trial."

If crimes, still other novel and far-reaching consequences, heretofore wholly unrecognized, must result. If so, then neither the Probate Court, the Circuit Court, the Court of Appeals, this Court nor any tribunal except a criminal court, can entertain a proceeding for contempt. And see *Middlebrook vs. State*, 43 Conn., 267.

Further, not only must the question of guilt be tried by a jury, but the accused must be confronted by the witnesses, contrary to what has hitherto been recognized universally. In Newland's Chancery Practice, old enough to have been dedicated with his permission to Lord Eldon, at p. 329, Volume 1, the author says: "If the party prosecuted for contempt denies it on his examination, or it does not clearly appear by his examination, the prosecutor may, if necessary, take out a commission of course to prove the contempt, the party prosecuted may cross-examine the witnesses, and with leave of the court examine witnesses of his own. After these proceedings, the court will decide whether a contempt has been committed or not." So in one of the latest text books of equity practice, Fletcher's Equity Pl. & Pr., Section 553: "A master or commissioner may be appointed, before whom the interrogatories may be filed, and who will take down and report to the court the respondent's answers thereto, with such other testimony as either the respondent or the prosecutor may desire to have taken." In *State vs. Matthews*, 37 N. H., 455, it is declared that the respondent's answers may be taken down by the clerk and reported by him to the court, or a master or commissioner may be appointed who will take down and report to the court the respondent's answers to the interrogatories, with such other testimony as either the respondent or the prosecutor may desire to have taken. So in *Albany Bank vs. Schermerhorn*, 9 Paige, 379-80, it is declared that the vice-chancellor may refer the proceeding to the master to take the answers to the interrogatories, and to take such proof as may be offered by either party in relation to the alleged contempt. Volume 4, p. 797, Enc. Pl. & Pr., states that it is a common practice to refer the case to a master or referee where the evidence

is so uncertain as to the character or extent of the contempt that the court is unable properly to assess damages or determine the punishment. *In re Savin*, 131 U. S., 278, it is held that the court may ascertain the facts either through interrogatories, or may in its discretion adopt such mode of determining that question as it may deem proper, provided due regard is had to the essential rules that obtain in the trial of matters of contempt. So in *United States vs. Anonymous*, 21 Fed. Rep., cited and approved by this Court in the Shipp case, it is held that there is no distinction in this respect between civil and criminal contempts. In *Una vs. Dodd*, 38 N. J. Eq., 460, where the question whether the Court of Chancery might in contempt proceedings order the evidence of non-resident witnesses taken by commission, the court held nothing to be clearer than that the court, in the exercise of an authority necessarily inherent in its jurisdiction, could proceed in its own way to ascertain the truth of the matters in dispute; that it had not only the right, but was bound, to use all means at its command for discovery of the truth; that the matter of contempt was one of which the court had complete and exclusive jurisdiction, could be tried by no other tribunal, and which was to be tried in conformity to the practice and methods which prevailed in that court, and that the accused, having a right that the court should ascertain through its accustomed methods whether the charges against him were true or not before pronouncing judgment, had not the right that the court should depart from its ordinary course of practice.

In re Chiles, 22 Wall., was tried upon interrogatories, as the files in the clerk's office show.

A very admirable summary of the doctrines relating to contempts, the extent to which they may be regarded as

criminal in their nature and yet are not crimes, and of the respects, or some of them, in which they are not crimes, is contained in the opinion of the court in *Merchants' Stock and Grain Co. vs. Board of Trade*, 201 Fed., 20.

If, then, contempt is not a crime entitling the accused to a trial by jury under Article III of the Constitution, nor, although infamous under the test declared in *Callan vs. Wilson*, a crime for which under the Fifth Amendment the accused can be held to answer unless on a presentment or indictment of a Grand Jury, nor the proceeding to punish which is a criminal prosecution which under the Sixth Amendment entitles him to an impartial jury, or to be confronted with the witnesses against him, in what sense is it a crime for present purposes?

The fact that certain of the Attorneys-General of the United States have held the President possessed of power to pardon in cases of contempt is, we think, rather strangely offered as a reason why, notwithstanding the foregoing, they should be held to be crimes, and to fall under Section 1044. A tendency upon the part of the executive, as of the legislative, and even, it has been claimed, of the judicial departments of the Government to be jealous of their respective jurisdictions and powers, is perhaps to be expected; but the weight of authority upon this question of the power to pardon, if material for present purposes, we conceive to be strongly in the negative, both numerically and with respect to the force of reasoning employed. The Attorneys-General have not been unanimous upon the subject. Attorney-General Berrien, as far back as 1830, excepted all cases of impeachment and proceedings for contempt from the extent of the pardoning power (2 Opp. Atty-Gen., 330). The subject was elaborately considered by the United States Circuit Court of Appeals *In re Nevitt*, 117 Fed. Rep., 455-8, in which the subordination, and the en-

tirely possible destruction of the co-ordinate judicial department of the Government is demonstrated if the Executive be conceded the authority to destroy the power of the courts to maintain their dignity and authority, and it is there pointed out that the opinion of Judge Blatchford upon the subject, cited in the opposing brief, was subsequently withdrawn by that able judge. "The judicial power of the United States is not derived from the King, as it was in England, or from the President, but is granted by the people by means of the Constitution, in its entirety, including the inherent and indispensable attribute of that power, the authority to punish for disobedience of their orders, to the Federal Courts, free from the control or supervision of the executive department of the Government, to the same extent that the entire executive power of the nation is vested in the President, from the supervision or control of the courts. Constitution, Art. II, Sec. 1." Equally cogent, and we submit unanswerable, is the reasoning of other courts upon this subject, if time and space, and the pertinency of the question to the present purpose justified quotations from them. See *Taylor vs. Goodridge*, 25 Tex. Civ. App., 124-26; *In re Chadwick*, 109 Mich., 597; *State vs. Morrell*, 16 Ark., 384.

Returning, then, to Section 1044, the inquiry is whether an offense which is not a crime under Article III, nor under Amendments V or VI, of the Constitution, which cannot be cognizable as a crime in the courts of the United States, because not created by any Federal statute, or which, even if indictable under Section 725 of the Revised Statutes, although that section has been repeatedly held by this court to be a mere limitation upon the power of courts to punish for it, is yet an offense against the inherent powers of the courts, and therefore, also, independently punishable

by them, even although also indictable, as in the case of an assault in the presence of the court, is, nevertheless, a crime, falling under Section 1044, and with respect to which the hands of the court are tied by that provision, however diligent it may have been in the effort to vindicate its authority and though, as in the case at bar, delay has resulted only from mere technical objections to the character of the proceedings to that end before it.

The section, as before pointed out, is as follows: "No person shall be prosecuted, tried or punished for any offense, not capital * * * *unless the indictment is found or the information is instituted* within three years next after such offense shall have been committed." Does this statute fairly, or possibly, contemplate any offenses except such as are prosecuted by indictment or information? Both the courts below held that it did not, and their position, we submit, is unanswerable.

Indeed, the contrary is not contended for in the opposing brief, its contention being rested upon the propositions, first that contempts were prosecuted under indictment or information at common law down to the time of Henry V, and, secondly, that the Report of the Committee in the case at bar was an "information," in the sense of the statute.

WERE CONTEMPTS OF COURT PROSECUTED BY INDICTMENT AT COMMON LAW?

In order to maintain the affirmative of the first of these propositions, it is found necessary to resort, as authority superior to the adjudications of the courts and the views of other recognized authorities upon legal subjects, to the findings of a literary antiquarian and to a writer in a law magazine. If the first of these is to be regarded as authority, it follows that contempt of court is a capital offense,

for which the right hand of the accused may be cut off and himself hanged, as in the alleged precedent cited at page 41 of the brief, thus effectually disposing of the appellants' seventeenth assignment of error in the lower court, that terms of imprisonment or from six to twelve months for contempt are cruel and unusual punishments for that offense. The references thus relied upon, however, are sufficient of themselves to show that the instances cited are of offenses which, though, as to most, of them committed under circumstances sufficient to constitute contempt, were cases of violent assault, assault with intent to kill, or *scandalum magnatum*, all of which were properly the subjects of indictment and jury trial. Of the last named offense, Blackstone remarks that it was subject to peculiar punishments by ancient statutes, inaugurated in the reigns of Edward I and Richard II (Comm., Vol. I, p. 402, Note A)—the very reigns during which Mr. Solly Flood's alleged precedents referred to at pp. 36-99 of the opposing brief are collected; and, Mr. Blackstone further states, the offense was redressed by proceedings on behalf of the Crown, to inflict the punishment of imprisonment upon the slanderer of peers, judges, or other great officers of the realm (Vol. III, pp. 123-4). Such precedents are necessarily without value for present purposes. The legal authorities upon the subject, a number of which are quoted *supra*, are all to the effect that power to punish is inherent in the courts, is coeval in point of time with their creation, and is as necessary to their existence as the judges who preside in them. It will be further noted that the learning and industry of the able and distinguished counsel for the respondents lead us to no single instance in the authorities in which a proceeding for contempt was ever instituted or conducted by means of an indictment or information.

IS THE CHARGE OF CONTEMPT, AN INFORMATION, IN THE
SENSE OF THE STATUTE.

The only remaining injury, under this heading, is as to the correctness of the contention on behalf of the respondents that the Report of the Committee in the case at bar was an "information" in the sense of the statute. This leads, simply, to the inquiry, what is an "information?"

In Bacon's Abridgement, tit. "Information," "A," an information is defined as an accusation or complaint for a criminal offense, either immediately against the King or against a private person, differing principally from an indictment in that the latter is an accusation found by the oath of twelve men, whereas an information is only the allegation of the officer who exhibited it. "An information is for the King that which for a common person is called a declaration"—or a charge of offense against anyone at the suit of the King. According to the same author, under the heading "B," the contempts for which information lay were "as in departing from the Parliament without the King's license, disobeying his rights, uttering money without his authority, escaping from legal imprisonment on a prosecution for a contempt, neglecting to keep watch and ward," etc., etc., but not for a contempt of court.

In 1 Chitty Crim. L., 843, they are declared to be of two kinds, namely, those filed *ex officio* by the Attorney-General, and those which, by leave of the court, are prosecuted in the name of the Coroner or Master of the Crown Office. This latter class of informations are those which were made the subject of abuses in the Star Chamber, were regulated and their abuses corrected by the statutes 4th and 5th William and Mary, chapter 18, which prescribed leave of court and the giving of costs by the prosecutors, and which never ex-

isted in this country—1 Bish. New Crim. Proc., Sec. 143. Criminal informations, as known to this country, are such, and such only, as in England were presented by the Attorney-General, or, in the case of a vacancy in that office, by the Solicitor-General; it differed from an indictment only in being presented by a public officer, on his oath of office, instead of by a grand jury on their oath, the powers of which officers in England are here distributed among our District Attorneys, who are held entitled at common law with us to prosecute by information, as a right inhering in their office. *State vs. Whitlock*, 41 Ark., 403, 405-7; *People vs. Spangler*, 46 N. M., 459, 462-3.

In *Goddard vs. State*, 12 Conn., 448, a complaint had been exhibited by a tithing-man to a justice of the peace, who had jurisdiction of such offenses, for a breach of the Sabbath, and the delinquent was convicted without a jury trial as demanded by him; *Held*, that the complaint exhibited was not an information, entitling the defendant to the right to be heard by counsel, to be confronted by the witnesses, and to be tried by an impartial jury, as required in all criminal prosecutions by the Bill of Rights. "We are to inquire, not merely whether this complaint is not like such an information, but whether it is the information of the common law. An information differs from an indictment in little more than the source from which it comes. And a complaint by a tithing-man or grand jury may, in its form, differ but little from the information of an Attorney-General, or the Master of the Crown Office. But this fact, will no more prove that it is an information, than that the information of an attorney is an indictment. * * * It has been attempted by the counsel of the plaintiff in error to show that, in its form and nature, it partakes of the features of an information. And it is certainly true that every accusation of one person by another to a magistrate, is an

information to that magistrate. But it is not, therefore, the information spoken of in the Constitution, because *it does not come from the source which gives it that character.*" (Italics ours.) We have in each county an officer, called the State's Attorney, whose duty it is to give information to the courts of offenses committed in the county, and accusations thus made have always been denominated informations. In Webster's Dictionary, the term *complaint* is said to be 'An accusation or charge against an offender, made by a private person or an informer, to a justice of the peace or other proper officer, alleging that the offender is violating the law, and claiming the penalty due to the prosecutor.' It differs from an information, which is the prosecution of an offender by the Attorney or Solicitor General, and from a presentment or indictment, which are the accusations of a grand jury."

In *State vs. Ashley*, 1 Ark., 279, 303, it is pointed out that there is no precedent for informations at the instance or at the relation of private parties prior to the Statute of Anne, and that they could not be so exhibited afterwards except in the cases mentioned in the statute. Similar statutes are the foundation of *Stewart vs. State*, 140 Ind., 7; *In re Wood*, 82 Mich., 75; *Herman vs. State*, 54 Neb., 626, and the other cases in so far as they are pertinent cited at p. 55 of respondents' brief, for the proposition that an affidavit or information may be filed by a private person.

In *Ex parte Thomas*, 10 Mo. App., 24, 25, cited at p. 54 of the brief for respondents, is an authority distinctly against their contention. In it, the State Constitution provided that, in all cases except felony, offenses should be prosecuted criminally by indictment or information as concurrent remedies; while a State statute provided that an information in the case of misdemeanors might be lodged by the prosecuting attorney, the assistant prosecuting attor-

ney, "or by any other person." The appellant had been convicted under proceedings commenced by information, so called, signed and sworn to by a private citizen, the validity of which as an information was the question before the court. It was held that the statute, authorizing the lodging of an information by any other person than the prosecuting or assistant prosecuting attorney was unconstitutional, and that the prisoner should be discharged. "It is settled in America that, where a State Constitution uses any common law technical term, without definition, such term must be understood and interpreted in its common law meaning," and that the common law meaning of an "information" was a charge of offense at the suit of the King—an emanation from the sovereign executive authority, and that the so-called information filed by a private person, upon which the petitioner was arrested and tried, was void under the Constitution of the State, notwithstanding the attempted legislative authorization of the act. The court further points out that the foundation of informations was the fact that grand jurors might not in many cases return indictments, "and it thus became necessary for the King himself, in his active care for the welfare and good order of his realm, or for some officer or person authorized to speak in his name, to give information to the proper tribunals of all such irregularities, to the end that the punishment might overtake the offenders." In *Lasley vs. District of Columbia*, 14 App. D. C., 407, 414, the Court of Appeals overruled an objection to an information that it had been filed by a special assistant attorney for the District, instead of by the attorney himself or by his regular assistant, only on the ground that the special assistant "is an assistant attorney authorized to be employed by law, and he acts under the same sanctions and obligations as the regular

assistant, * * * both having authority to act for and in the place of the attorney of the District, as his assistant."

Other authorities for the proposition that an information is a definite, legal, common law term, and means only, the act of an officer representing the sovereign power, are *State vs. Hewlett*, 124 Ala., 471; *State vs. Kelm*, 79 Mo., 515; *State vs. Shortell*, 93 Mo., 123, approved in *State vs. Kyle*, 166 Mo., 287, 303; *Hagerty vs. People*, 6 Lans., 332, 346.

NO AUTHORITY FOR THE PROSECUTION OF CONTEMPT BY INFORMATION IN UNITED STATES COURTS.

Since, as established by the authorities noted *supra*, no crimes against the United States, or of which the courts of the United States have jurisdiction or can take cognizance, can exist except by statute, it follows that the method of their prosecution must, also, be prescribed by statute. But the only authority under the Federal statutes for prosecution by information is contained in Section 1022 of the Revised Statutes, providing that "all crimes and offenses committed *against the provisions of Chapter 7, title 'crimes,'* and which are not *infamous*, may be prosecuted either by indictment or by information filed by a District Attorney."

Under this condition of the law, three facts are to be noted:

First, that, in accordance with the authorities above cited in this brief, the word "information" as used in the law means a common law information, to be filed by the District Attorney; secondly, that procedure by that method is permitted only in the case of crimes "which are not infamous;" infamous crimes, as above pointed out, having been determined by this Court to include all such offenses as are punishable by imprisonment; and,

in the third place, that the only authority to proceed in the United States courts by information is limited to the crimes and offenses embraced in the provisions of Chapter 7, title crimes, which chapter contains no reference to contempt of court. Each of these three characteristics of procedure by information, thus affirmatively established by the statute as well as by the common law principles relating to that procedure already noted, separately precludes the claim that proceedings in contempt by a court of justice to vindicate its dignity and authority are proceedings prosecuted by information, or that they can be held to be included in the provisions of Section 1044.

In the District of Columbia, it is true, many misdemeanors may be prosecuted by information, as was done in the cases of *Callan vs. Wilson* and *Lasley vs. District of Columbia*, already referred to. This results from the fact that the courts of the District have not only the jurisdiction of United States courts, but also the jurisdiction possessed by the courts of the State of Maryland at the time of the cession—a fact which, of course, can have no bearing upon the present inquiry, since Section 1044 is a general law of the United States, applying to all its courts, and to be construed accordingly. If the fact were otherwise, however, it would not aid the case of the respondents, since even here, as declared in *Callon vs. Wilson*, the punishment for contempt of court, extending to imprisonment, is “infamous,” and therefore triable by a jury, if classed at all as a crime in any ordinary acceptance of that term, as well as being expressly excepted from the offenses which may be prosecuted by information, by the express terms of Section 1022.

As further pointed out in *People vs. Sponsler*, 46 N. W., 463, “Of course, information of the common law was always triable in the court by a petit jury.” There is no offense known to the law which can be prosecuted by either

indictment or information which is triable by the court, except, of course, petty misdemeanors, the punishment of which is not infamous. We are thus led to still another insuperable objection to a construction of Section 1044 which would include in its provisions trials by courts, in contempt proceedings, or treat them as prosecutions on indictment or information, which must be found or instituted within three years after the offense committed.

STATUTE OF LIMITATIONS WITHOUT APPLICATION TO COURTS OF EQUITY.

The defense of limitations is, of course, exclusively statutory, and, wherever interposed, presents simply the question whether the proceeding is one covered by the terms of the statute. From its inception, for example, it has been held not to apply to any proceeding in equity, because the prohibition is against the bringing of "actions" within the period specified, and suits in equity do not fall within the legal nomenclature, "actions." Independently of any, or of all, the considerations presented in this brief upon this subject, it would seem to be an exceedingly forced construction to contend that a court of equity, proceeding within its own jurisdiction and according to its own methods of procedure (see *supra*, pp. 27-32) to vindicate its authority, is *ipso facto* converted into a court of law and its proceedings into an "action," or into a prosecution within the meaning of a statute which is plainly directed to prosecutions for offenses in the criminal courts.

THE CONVICTION WAS NOT OF EACH ACT CHARGED, BUT OF CONTEMPT.

Throughout the discussion of the present subject of inquiry, we have thus far treated it as though the inquiry be-

fore the court below were whether the respondents were guilty of each of the several acts specified in the charges against them—in like manner as if they had been tried for as many several and distinct offenses of assault and battery, criminal libel, or the like, some of which the respondents claim were barred by the statute of limitations and complain that the court did not so adjudge. If the case were so, we submit that the objections to the plea of the statute of limitations set forth in the able and forcible opinion of the court below (Rec., pp. 42-59) would alone be conclusive, independently of the corroborative authorities and additional considerations contained in this brief.

The slightest examination of the record, however, will show that the case is not of that character. The order of May 16th, appointing the Committee of Inquiry, recited that there was reason to believe that the respondents "are guilty of contempt of the Supreme Court of the District of Columbia in wilfully violating the terms of an injunction issued by the court," and directed the Committee to inquire "whether there is reasonable cause to believe the said persons guilty as aforesaid." Upon the coming in of the charges, specifying various acts which the Committee found constituted contempt, rules to show cause were issued (Rec., pp. 19, 146, 182), ordering each of the respondents to show cause "why he should not be adjudged to be in contempt of the orders and decrees of the court in the said equity cause, and be punished for the same;" and the judgment, in each case (Rec., pp. 131, 169, 204) was, simply, that the respondents were, severally, "guilty of a contempt of this court in wilfully violating the terms of the said injunctions." It is not claimed, and cannot be, that, in each case, some of the acts with which the respondents were charged were not committed within three years before the issuance of the rules to show cause, or that their conviction

and sentence as to these charges, even under the theory of the respondents themselves, were barred by any statute of limitations. In other words, the bar of the statute, even if pertinent to some of the acts charged, was no defense to the whole case, or to the judgment and sentence rendered. Even if some of these charges could be held, as matter of law, to set forth no case of contempt, yet if others, or if any other, did so, or if it should appear that, as to some of them, there was no evidence sufficient to convict, the judgment and sentence must nevertheless under familiar principles be upheld. As was said by the Court of Appeals in *Gompers vs. Buck's Store & Range Company*, 33 App. D. C., p. 574, after pointing out that there was no error in the finding of the court below that the respondents were guilty of certain acts specified in the opinion:

"In addition to finding the defendants guilty of the foregoing offenses, as charged, they were also found guilty of numerous other offenses charged in the petition. Since, however, the finding of guilt on the counts or charges above considered is sufficient to support the judgment of the court, and the penalty imposed is not greater than could have been inflicted had they constituted the only offenses charged, it will not be necessary to consider the other offenses charged in the petition of which the defendants were found guilty. In a criminal proceeding, where the accused is found guilty as charged under an indictment containing numerous counts, the judgment will not be reversed, though some of the counts are bad, if the good ones are sufficient to support the judgment"—followed by many citations in support of the principle stated."

It has already been pointed out that the only exception in the Record with reference to the defense of limitations is to orders of the court (Rec., pp. 40-41, 160-1, 197-8) denying motions to dismiss the entire proceeding on the alleged

ground that some of the acts complained of were barred, and that each of the acts set forth in the charges were thereafter proved in evidence without a ruling or request for one upon the question whether or not Section 1044 of the Revised Statutes barred them; as, also, that at no other stage or phase of the case was the court requested by the respondents to rule upon that question, nor exception taken to any ruling made which involved it. If it be said that the very clear manifestation of the trial court's view upon that question, and of the manner in which it would have ruled upon it if presented, as indicated by its opinion on the motion to dismiss, was sufficient to discourage expectation on the part of respondents or their counsel that a ruling in accordance with their claims, if requested, would be made, it is well settled that this does not excuse the failure to apply for and obtain a ruling, and cannot constitute the equivalent of an application, ruling and exception.

This brief will not be protracted by reply in detail to the many citations contained in the brief for respondents, but a brief reference will be made to a few of them. Neither p. 974 of the 6th Encyc. of Law, cited at p. 52 of the brief, nor any other page of that work which we have been able to find, declares the proposition for which it is there cited. The same observation is to be made with respect to the reference at p. 57 of the brief to Decennial Digest, title "Contempt," represented as treating affidavit and information as equivalent terms. Nor will Hawkins' Pleas of the Crown, cited at p. 55, be found to afford any support for the contention that informations were ever a method of prosecuting contempts of court.

With respect to *Beattie vs. People*, 33 Ill., pp. 651, 662, cited p. 63, the Illinois Statute of limitations applied to "all prosecutions, by indictment or otherwise," and the court

held that the jurisdiction in contempt was a prosecution in behalf of the people, that it must be in the name of the people, and that the statute of the State was intended to apply to such cases. *Gordon vs. Commonwealth*, 141 Ky., 461, cited at p. 64, was a proceeding, evidently statutory, against a witness who admitted perjury and who was tried by a jury to fix his punishment, the proceeding being subsequent to the perjury for a period of more than twelve months, which was the statutory bar in case of the particular offense.

Herman vs. State, 54 Nebr., 626, cited at p. 58, as shown in the opinion of the court below (Rec., pp. 58-59), depended upon a local statute in Nebraska, and is therefore without advantage in jurisdictions where similar statutes do not exist. In *Cartwright's Case*, 114 Mass., 230, although as stated an information was filed by the Attorney-General, no question of procedure was raised, nor was the case tried by a jury, as must be done under all common law informations where the offense is punishable by imprisonment. That the case was not considered one in which a crime was prosecuted is apparent from the following declaration in the opinion: "The jurisdiction and power of the court do not depend upon the question whether the offense might or might not be punished by indictment." The doctrine in *re Mulce*, 7 Blatch., 23, 25, cited at p. 46, was, as is pointed out by the court in the case of *in re Nevitt*, 117 Fed., at pp. 453 and 457, abandoned by Judge Blatchford himself.

In *Hurley vs. Commonwealth*, 188 Mass., 443, cited at p. 49 of the brief, one statute of the State provided for re-examination of a judgment in a criminal case for any error of law or fact, and another statute provided a jurisdiction to correct and prevent errors and abuses in all courts of inferior jurisdiction if no other remedy was expressly provided. The court in its opinion declared "a proceeding for contempt is not a criminal case, in the sense that all the

provisions of our statutes in regard to criminal practice and procedure are applicable to it," and that it was certainly doubtful whether, in the former act, the legislature had in mind cases of contempt of court; but that, considering both statutes, it would do no violence to the general purpose of the legislature in holding that *a sentence to punishment for a distinctively criminal contempt is a judgment in a criminal case, which may be re-examined upon a writ of error.* This italicized portion of the opinion, which is all that is quoted in the brief for respondents, it will be apparent does not reasonably indicate the purport of the decision.

At p. 50 of respondents' brief, it is said that no well considered case of indirect contempt exists in which the respondent has not had the benefit of a written and sworn accusation against him, and at p. 51 it is added that, except perhaps in the Court of Star Chamber in its worst days, has it ever been decided that in indirect contempts the accused was not entitled to be informed of the nature of the accusation against him, and this under oath. As is pointed out in the opinion of Mr. Justice Wright (Rec., p. 56), *in re Savin*, 131 U. S., 277, was a case in which the offense was merely orally reported to the court, and written specifications, although demanded by the respondent, were denied. In *State vs. Frece*, 24 W. Va., 460, 461, it is declared that, both in cases of direct and of constructive contempt, judges may, upon their own motion, and without either evidence or other sworn statements, award rules against offenders. Many other authorities to similar effect exist, but the question is too remote from application to the case at bar, in which there were specific written charges, duly verified, to justify further references or discussion.

With the following additional authorities, bearing directly upon the question whether contempt of court is a

criminal offense or crime, and whether either the defense of limitations or laches, at least in proceedings instituted by the court itself, is a defense, this subject will be concluded.

In *Jones vs. Mould*, 151 Iowa, 599, 607, one Jones had been enjoined from the unlawful sale and keeping for sale of intoxicating liquors, and thereafter he had been cited for contempt of the injunction, whereupon, after hearing, the trial court found the evidence insufficient to sustain the charge and dismissed the complaint. The informant took the case up by certiorari, whereupon the order dismissing the contempt proceedings was set aside and annulled, the cause remanded to the trial court for further proceedings, and upon such further proceedings the accused pleaded former jeopardy. Overruling this plea, the court said: "Neither does the plaintiff make a case which entitles him to a plea of former jeopardy, or former adjudication. The constitutional provision upon this subject applies only to charges of crime; a contempt, though proceedings for its punishment are generally spoken of as quasi-criminal, is not a crime. (Citations.)"

In *State vs. Becht*, 23 Minn., 411, a contempt case, it was argued under the State Bill of Rights that the accused could only be held upon the contempt charge after action by the grand jury; but the court said: "These constitutional provisions have no application to a case of this kind. There was no criminal prosecution here, nor was the relator held to answer for a criminal offense in the meaning of the Constitution."

In *Matherson vs. Hanna-Schoellkopf, et al.* 122 Fed., 836, the court held laches a bar to contempt proceedings, sought by a private person, intimating that the statute of limitations cannot be pleaded successfully. The attachment for contempt was refused, in that case, because of a delay of four years in bringing the matter to the court's attention.

"Even if the alleged contempt should be regarded solely in its quasi-criminal aspect, as an offense against an order of the court, the lapse of time is so great that a court should be reluctant to inflict a punishment from which, if the offense were indictable, the statute of limitations would be a complete protection. I do not say that the lapse of time is in all cases a sufficient reply to the charge of contempt, but certainly, after four years, the case should be clear, and the circumstances should call distinctly for the court's action."

In *Dale, et al., vs. Roosevelt*, 1 Paige Ch., 35, the court said: "There is nothing in the objection that the injunction has been waived by the neglect to apply sooner to this court, because the counsel for the heirs in the suit at law have constantly protested against the proceedings there; and it does not lie with Roosevelt to complain that he has not sooner been punished for violating the injunction, if a contempt has in fact been committed."

In *Matter of Hay, etc., Works*, 22 App. Div. (N. Y.), 87, 91, the Court said: "The respondent also claims that there is some limitation within which this proceeding could be commenced which prevents the court from now punishing him for his contempt. We know of no provision limiting the power of the Supreme Court to punish for contempt, because of a lapse of time since the commission of the contempt. The fact that two years have expired, so that now this respondent is not liable to a criminal prosecution, has no relation to the power of the court to punish for a contempt, and, although it may be that this respondent cannot be punished criminally, we think that he can be punished under the provisions of the Code of Civil Procedure, and that it was the duty of the court below to have granted the application." The section of the Civil Code, thus referred to, was Sub-division 2 of Section 14, which provided that

"a court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or their misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced in either of the following cases. * * * 2. A party to the action or special proceeding, for putting in fictitious bail or a fictitious surety or for any deceit or abuse of a mandate or proceeding of the court."

In *Brockway vs. Wilbur*, 5 Johns., 356, a rule for an attachment against a sheriff for not returning an execution delivered to his deputy was granted, though 12 years had elapsed since the execution was issued, and over the contention that the application came too late.

See, also, *People vs. Canvassers*, 74 Hun., 179, 189.

Under a statute making horse racing a crime and providing for injunctive relief against it, the court said: "It is further contended that the act violates Section 14, Article 1 of the State Constitution, which provides that 'No person shall be put in jeopardy twice for the same offense.' It is insisted that the defendant may be punished by a fine on a criminal prosecution, and again made subject to the injunction and deprived of the use of his property, thus punishing him twice for the same offense or act. But the civil suit authorized by the act is not a criminal prosecution, and the injunction is not a punishment within the meaning of the Section of the Constitution cited. (Citation.) But it is further contended that, in case of a violation of an injunction under the civil remedy part of the act, the court might fine the defendant for contempt for disobeying the order of the injunction, and that it would make him liable to double punishment. The statement of that proposition furnishes a sufficient answer thereto. In that case he would

not be punished for crime, but for contempt of court. (Citations.)" *State vs. Roby, et al.*, 142 Ind., 168, 188-9.

In *Middlebrook vs. State*, 43 Com., p. 267, where the statute denied criminal jurisdiction to the Court of Common Pleas, it was held that a proceeding to punish for contempt is not a prosecution of a crime.

"A proceeding for contempt, while it is of a criminal nature, is not a criminal prosecution. Courts having no criminal jurisdiction may punish for contempt. * * * And when the contempt consists of an act punishable under the criminal law, as an assault perpetrated in open court, the adjudication in contempt will be no bar to a criminal prosecution for the assault or breach of the peace. The proceeding in contempt is for an offence against the court as an organ of public justice and not for a violation of the criminal law. The power to punish such offenses is inherent in courts of record, to enable them to preserve their own dignity and duly to administer justice in the causes pending before them." *State vs. Howell*, 80 Com., 668, 671.

VI.

The sixth question, raised by assignment VII, is whether violation of the permanent injunction, of March 30, 1908, was charged in the contempt proceeding, and whether, therefore, there was not error in the conviction of the appellants for its violation.

No argument in support of this assignment is found in the brief for respondents, from which it is, perhaps, fair to assume that it has been abandoned. Its foundation, as presented to the court below, was the following:

In the order of May 16, 1911, appointing the Committee and directing it to inquire whether the respondents were guilty, the temporary injunction, issued on December 18,

1907, is the only injunction mentioned. The charges presented by the Committee, however, set forth specific acts of violation, some between the 18th day of December, 1907, and March 30, 1908, when the temporary injunction was in effect, and some after it was made permanent, though in the form of a new order, *in totidem verbis* with the old, both injunctions being referred to in the Report and made part thereof as Exhibits A and B, respectively. Thereupon the rule to show cause, of June 26, 1911, served upon each of the defendants, recited that, upon consideration of the Report of the Committee appointed to inquire whether the respondents, severally, had been guilty of contempt "in wilfully violating the terms of the injunctions, issued by this court in the cause of the *Buck's Stove and Range Company vs. The American Federation of Labor, Samuel Gompers, et al.*, No. 27,305, Equity," and "upon consideration of the charges of contempt filed therewith," which charges, as stated, specifically assigned acts in disobedience of each of the injunctions, the court "ordered that the above-named Samuel Gompers show cause on or before the 17th day of July, 1911, at ten o'clock A.M., in Equity Court No. 1, provided a copy of this rule and said charges shall be served on him on or before the 6th day of July, 1911, why he should not be adjudged to be in contempt of the orders and decrees of the court in the said equity cause, and be punished for the same," orders of like tenor being passed in the cases of Mitchell and of Morrison. In other words, regardless of the terms of the order appointing the Committee, each of the defendants was charged with disobedience to both the temporary and the permanent injunction, and were cited by the court to show cause why he should not be punished for contempt, not of the order or decree of December 18th alone, but of the orders and decrees of the court in the said

equity cause, in the light of the charges of contempt filed against him.

VII.

The seventh objection, raised by Assignment VIII, is that there was error in finding that any unlawful boycott existed after December 23, 1897, the date of the preliminary injunction, or that any act in furtherance of a boycott was indulged in after that date. The latter part of this objection will be considered under the next succeeding head, viz., The first branch of it, that efforts to continue the boycott by disobedience of the injunction after its passage did not constitute contempt unless the evidence showed those efforts to have been successful, can not require consideration. If well taken, then the prisoner referred to at p. 41 of the opposing brief whose right hand was cut off and himself hanged for throwing a brick-bat at the judge, was not really guilty of contempt, because the bat did not strike the judge.

In *State vs. Howell*, 80 Conn., 668, it was urged in a contempt proceeding for newspaper publications with reference to a cause on trial, that there was no evidence that the offensive publications ever came to the attention of the court or jury, and that, therefore, they could not have obstructed or interfered with the cause of justice or constituted contempt. The court said: "But articles circulated through the neighborhood where a trial is in progress may influence the trial without being read by the court or jurors. * * * When, therefore, articles calculated to interfere with a fair trial of a cause, and thus to obstruct justice are so published and circulated, it is not necessary, in order to constitute them contempt, that they actually reach the eyes of the court or jury. *Telegram Newspaper Co. vs. Commonwealth*, 172 Mass., 296; *People vs. Wilson*, 64 Ill., 195."

VIII.

The eighth objection, raised in part by the eighth and by the sixth and tenth assignments of error, is that the evidence was insufficient to sustain the conviction of contempt.

Neither the specifications of error nor the brief of the respondents contain an intimation that the injunctions in this case infringed the respondents' constitutional rights of association, of free press or of free speech. Those contentions, once so prominent in this litigation, and particularly in the literature of the respondents in evidence in this case, have at last been abandoned. This is doubtless due to what this court said upon that subject in 221 U. S., at pp. 438-9:

"The court's protective and restraining powers extend to every device whereby property is irreparably damaged or commerce illegally restrained. To hold that the restraint of trade under the Sherman anti-trust act, or on general principles of law, could be enjoined, but that the means through which the restraint was accomplished could not be enjoined, would be to render the law impotent. * * *

"In the case of an unlawful conspiracy, the agreement to act in concert when the signal is published gives the words 'unfair,' 'we don't patronize,' or similar expressions a force not inhering in the words themselves, and therefore exceeding any possible right of speech which a single individual might have. Under such circumstances, they become what have been called 'verbal acts,' and as much subject to injunction as the use of any other force whereby property is unlawfully damaged. When the facts in such cases warrant it, a court having jurisdiction of the parties and subject-matter has power to grant an injunction."

But the respondents now take the position in their assignments of error, and in their brief, that they have scrupu-

lously obeyed the injunction, and that there is in the Record *no evidence whatever tending to prove the contrary*. Their position is thus stated in the specifications of errors, the ones which relate to this question :

"6. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold the respondents guilty of the charges made against them, or any of them.

"8. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of the boycott was indulged in by the respondent after December 23, 1907.

"10. The majority of the Court of Appeals erred in finding the respondents guilty of the charges against them, and also in so doing, relying on matters not in evidence and on charges not sustained," what "matters not in evidence," are thus referred to, is not stated.

In the brief, the following assertions are made :

"Knowledge on the part of the respondents of the existence of any unlawful boycott against the Buck Stove and Range Co. during the period described in this report, was at all times and in every phase denied, and no evidence adduced to overcome these denials" (p. 21).

"It is a curious fact that, although the respondents have been found guilty and sentenced to severe punishment for supposed defiance of the orders of court in practically continuing a boycott against an institution under the protection of the court after the passage of an injunction order, there is no affirmative evidence of any kind in the Record, from beginning to end, of the existence of any illegal boycott whatsoever affecting in the slightest degree the affairs of the Buck Stove and Range Co. after December 23, 1907." (p. 76).

This was strange language to address to the court below, which had already, in the former contempt proceedings, spoken thus of the very acts of the respondents, shown without dispute, in the present Record (33 App. D. C., 573) :

"It will be observed that in each of the above publications the members of the American Federation of Labor and their friends are combined together. This is most significant, and in the conditions then existing was manifestly intended to encourage and counsel a continuation of the prohibited acts. * * *

"It must be remembered that the injunction affected directly and indirectly several millions of the people of the United States. The decree did not run alone against about two million members of the American Federation of Labor throughout the country. Hence it is proper to consider the effect of the acts of the defendants upon this membership and the persons who had formerly been prevented by the boycott from patronizing the complainant. While these acts, if they had affected only the conduct of the defendants, or if the injunction had been against them alone, might not have amounted to more than a comment or criticism of the action of the court, yet, if the remarks, when published and uttered, were such as to tend to inflame their followers into a feeling of resentment to the decree of the court and lead to disobedience of its commands, the defendants would be chargeable with contempt for producing this result. Contempt may be committed by inuendo and insinuation. It may consist in maliciously saying or doing anything that will have a tendency to induce others to disregard the authority of the court. While the publications and utterances before us may not, when literally interpreted, constitute a technical contempt, yet, if the manifest intent of the defendants was not only to disobey the order of the courts themselves, but also to inspire their followers to do likewise, it may be regarded as a punishable contempt. We think it is this sort of offense of which the defendants are here guilty.

"The boycott waged by the American Federation of Labor against the business of complainant had become so acute and extensive that the term 'boycott,' 'unfair' and 'we don't patronize,' when used in connection with complainant's name, had acquired such a significance to the organization *and its friends* that the mere printing or uttering of the name in that connection was a signal to the membership *and their friends* not to deal with the complainant or persons having business relations with it. As Mr. Justice Robb said in the opinion of this court in the former case (33 App. D. C., 83), referring to the 'unfair' or 'we don't patronize' list, 'the court below found, and in that finding we concur, that this list in this case constitutes a talismanic symbol indicating to the membership of the Federation that a boycott is on and should be observed.'

"The mere mention of complainant's name by these leaders in the columns of the *Federationist* or on the public platform in connection with the expression 'boycott,' 'unfair,' or 'we don't patronize' might tend to influence many to disregard the decree of the court, and thus become as effective a notice to their followers as it had formerly been when published in the 'unfair' or 'we don't patronize' list. We are convinced that the acts charged were committed by the defendants for the express purpose of nullifying the order of the court, in the belief that they were technically avoiding the charge of contempt. The acts of these defendants, taken as a whole, can produce in the mind of any reasonable person but one impression—a concerted, well-planned effort to encourage *the membership* of the American Federation of Labor *and their friends* to disregard and disobey the orders of the court, *and to create among their followers and their sympathizers a lack of respect for the authority and dignity of the court.*"

It will be noted that the view of the acts and conduct of the respondents, and of the nature of the contempt thereby committed, taken by the court in the above quotations from

its opinion, is precisely that which was presented to the lower court in the several reports of the Committee against the respondents in the present proceedings, and which was adopted by the court below. The facts upon which the foregoing observations and conclusions of the court were based are identical, in all respects, with those charged in the Reports of the Committee, and are not only the subject of no denial or dispute whatever in the present Record, but are proved out of the mouths of the respondents themselves, with the exception of two only, of the charges against the respondent Mitchell, namely, his connection with the "Urgent Appeal," and with the United Mine Workers boycotting resolution of January 25, 1908, presently to be considered.

The bill of exceptions in the present case contains a huge mass of material in refutation of these assertions on behalf of the respondents. We shall quote only a comparatively small part of it, referring the court to the pages of the Record where more is to be found.

First, as to the continuance of the boycott after the injunction of December 18, 1907, became operative. The proof shows that it continued, without interruption, until July 20, 1910, and until *these respondents, on that date, called it off*.

I.—During the last week in January, 1908, the convention of the United Mine Workers of America, the largest among the unions which comprise the A. F. of L., its membership of 270,000 being one-fifth of the entire membership of the A. F. of L., was in session at Indianapolis. At the same time, the Executive Council of the A. F. of L. was in session at Washington, D. C. Respondent Mitchell presided over the convention at Indianapolis and respondents Gompers and Morrison were in attendance at the meeting in Washington. It is curious to trace the official ac-

tions of both bodies, and to note how perfectly they co-operated to nullify the injunction.

On January 25, the Miners' convention, respondent Mitchell being in the chair at the time, adopted the following resolution (Record, p. 243):

"WHEREAS, The Buck Stove and Range Company of St. Louis, Missouri, have taken legal steps to prevent organized labor in general and the officers and Executive Committee of the A. F. of L. in particular, from advertising the above-named firm as being on the unfair or 'we don't patronize' list; and,

"WHEREAS, By the issue of such an injunction or restraining order as prayed for by above-named firm, organized labor will be deprived of one of its most effective weapons; and

"WHEREAS, J. W. Van Cleave, the President of the above-named firm, also President of the National Manufacturers' Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"*Resolved*, That the U. M. W. of A. in 19th annual convention assembled place Buck stoves and ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above make be fined five dollars and failing to pay the same be expelled from the organization."

Of that resolution the court below said in its former opinion (33 App. D. C., 574):

"The adoption of this resolution could accomplish but one end—the perpetuation and continuation of the boycott."

The Executive Council of the United Mine Workers, of which respondent Mitchell was a member, published a journal, the editor of which was appointed by Mitchell himself

as President. The above resolution was published in the issue of that journal of January 30, 1908, and was sent out to more than eight thousand subscribers, and it was also printed in the published proceedings of the convention and widely distributed.

In the same issue of the Miners' Journal there was published the following statement by respondent Gompers (Rec., pp. 253, 254):

"In the official organ of the National Association of Manufacturers, one of the counsel for the Buck Stove and Range Company declares that punishment for violation of the injunction issued by Mr. Justice Gould against the American Federation of Labor applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation of Labor assure us that this construction of the court's order is accurate."

While the Miners' Convention was in session at Indianapolis, the Executive Council of the A. F. of L. in session at Washington was listening to a report by respondent Gompers relative to a certain resolution, No. 49, which had been adopted by the November, 1907, Convention of the A. F. of L., in which he said (Rec., p. 230):

"Resolution No. 49. In conformity with the provisions of this resolution, a circular was issued on November 26th to all affiliated organizations in regard to the suit brought by Mr. Van Cleave for the Buck's Stove and Range Company against the A. F. of L.,

its E. C., and others. The E. C. has been advised from time to time *what steps have been taken in this matter.*"

The resolution, No. 49, referred to by Gompers in this report, was as follows (Rec., pp. 231-232):

"Resolved, That each central body affiliated with the A. F. of L. be and is hereby requested to appoint a Committee who shall conduct and manage a 'Campaign of Education' among the membership affiliated with their central bodies, as well as dealers in stoves and ranges in their locality, and thoroughly inform them of the entire facts of the dispute between the Metal Polishers, Buffers, Platers, Brass and Silver Workers' Union of North America, the Brotherhood of Foundry Employees, also as to the attitude of J. W. Van Cleave and the Manufacturers' Association towards organized labor. Be it further

"Resolved, That the said Committee shall report on the first of each month to the officers of the A. F. of L. the progress of the 'Campaign of Education' together with a complete list of all dealers in that locality who are handling and selling the products of the Buck Stove and Range Company. Be it further

"Resolved, That all commissioned organizers of the A. F. of L. shall report on the first of each month to the officers of the A. F. of L. the progress made in this 'Campaign of Education' by the different Committees of the different central bodies in their respective districts, and also render such aid to all Committees as lies in their power."

The circular referred to in the above report of respondent Gompers was in part as follows (Rec., pp. 285, 286):

"Mr. Van Cleave, for the Buck Stove and Range Company, brought suit against the American Federa-

tion of Labor and its Executive Council and has petitioned the court for an injunction to prohibit the American Federation of Labor from in any way advising organized labor and its friends of the fact that the Buck Stove and Range Company is unfair to its employees and for that reason its name is published upon the American Federation of Labor's 'we don't patronize' list.

"The court will soon give a decision on the legal issue which has been raised. We shall continue to maintain that we have the right to publish the name of the Buck Stove and Range Company upon the 'we don't patronize list.' Should we be enjoined by the court from doing so, the merits of the case will not be altered, nor can any court decision take from any man the right to bestow his patronage where he pleases." * * *

"Bear in mind that you have a right to decide how your money shall be expended."

"You may or may not buy the products of the Buck Stove and Range Company."

"There is no law nor edict of court that can compel you to buy a Buck stove or range."

"You can not be prohibited from informing your friends and sympathizers of the reason why you exercise this right. You have also the right to inform business men handling the Buck Stove and Range Company's products of its unfair attitude towards its employees and ask them to give their sympathy and aid in influencing the Buck's Stove and Range Company to deal fairly with its employees and come to an honorable agreement with the union primarily at interest.

"It would be well for you as central bodies, local unions and individual members of organized labor and sympathizers to call on business men in your respective

localities, urge their sympathetic co-operation, and ask them to write to the Buck Stove and Range Company of St. Louis, urging it to make an honorable adjustment of its relations with organized labor.

"Act energetically and at once. Report the result of your efforts to the undersigned.

"SAMUEL GOMPERS, *President,*
"American Federation of Labor.

"FRANK MORRISON, *Secretary,*
"American Federation of Labor."

After listening to said report of the respondent Gompers, the Executive Council authorized the sending out of two circulars, one of them being what is known in the literature of this case as "The Urgent Appeal" and the other being the reprint of an editorial by Gompers, published in the February, 1908, number of the *American Federationist*. Thereupon Gompers and Morrison sent one of said Urgent Appeals and a copy of this editorial, in a single envelope, to each of the local unions comprised within the A. F. of L., numbering more than 25,000. And they also sent them to Indianapolis, and there was published in the *Mine Workers' Journal* of January 30, 1908, the editorial referred to. To the circular reprint of the editorial there was appended the statement by Gompers about the opinion of counsel as to violations of the injunction by those outside of the District of Columbia which has heretofore been quoted in this brief.

The "Urgent Appeal" above referred to contained, among other things, the following language (Record, p. 266):

"To All Organized Labor Greeting:

"Justice Gould, of the Supreme Court of the District of Columbia, has issued an injunction against the American Federation of Labor and its officers, officially and individually.

"The injunction invades the liberty of the press, and the liberty of speech.

"It enjoins the American Federation of Labor or its officers, from printing, writing or orally communicating the fact that the Buck Stove and Range Company has assumed an attitude of hostility towards labor, and that organized labor has made this fact known, and asked our friends to use their influence and purchasing power with a view of bringing about an adjustment of all matters in controversy between that company and organized labor. The injunction is of the most sweeping character, and it, as well as the suit in connection therewith, must of necessity be contested in the courts, though it reach the highest judicial tribunal of our country.

"With this is a reprint of an editorial from the February, 1908, *American Federationist*, entitled 'Free Speech—Free Press Invaded by Injunction against A. F. of L.—A Review and Protest.' The editorial contains a full presentation of labor's position in regard to this injunction."

The name of John Mitchell, as one of the Executive Council, was appended to this circular by his colleagues in pursuance of a previous general authorization by him to them to sign his name to any circular issued by the Executive Council. Although he knew that it was being widely circulated with his name signed to it, he took no steps to repudiate the act of his colleagues in attaching his name thereto, nor did he state to any one that he disapproved of it, or of the fact that his name was signed to it. He has since repeatedly stated that he would have authorized it to be so appended had the contents of it been brought to his attention beforehand. Further, in the report of the Executive Council, made to the November, 1908, convention of the A. F. of L., which was signed by him, it is stated that "We issued the appeal" (Record, pp. 539, 540), and on the

witness stand in the present case he testified that his signature was attached pursuant to the custom, followed by no dissent on his part, and that he would have authorized the use of his signature had he been present (Record, p. 492).

The editorial referred to, published in the *American Federationist* for February, 1908, and in the *United Mine Workers' Journal* of January 30, 1908, as above stated, and sent out in circular form, contained the following statements, among others (Record, p. 267) :

"Justice Gould, of the Supreme Court of the District of Columbia, issued an injunction on December 18, 1907, against the American Federation of Labor and its officers and all persons within the jurisdiction of the court. * * *

"This injunction is the most sweeping ever issued. It is an invasion of the liberty of the press and the right of free speech. On account of its invasion of these two fundamental liberties this injunction should be seriously considered by every citizen of our country. * * *

"With all due respect to the court, it is impossible for us to see how we can comply with all the terms of this injunction. * * * The publication of the Buck Stove and Range Co. on the 'We don't patronize' list of the American Federation of Labor is THE EXERCISE OF A PLAIN RIGHT. To enjoin its publication is to invade and deny the freedom of the press—a right which is guaranteed under our Constitution. * * *

"The matter of attempting to suppress the boycott of the Buck Stove and Range Co. by injunction, while important, yet pales into insignificance before this invasion and denial of constitutional right. * * *

"No person can be compelled to buy an article. If the purchaser chooses to let alone certain products for any reason, or for no reason, there is no way of compelling him to buy.

"This injunction can not compel union men or their friends to buy the Buck stoves and ranges. FOR THIS

REASON, THE INJUNCTION WILL FAIL TO BOLSTER UP THE BUSINESS ON THIS FIRM, WHICH IT CLAIMS IS SO SWIFTLY DECLINING.

"Individuals as members of organized labor will still exercise the right to buy or not to buy the Buck's stoves and ranges. It is an exemplification of the saying that 'you can lead a horse to water, but you can't make him drink,' and more than likely these men of organized labor *and their friends* will continue to exercise their right to purchase or not to purchase the Buck's stoves and ranges.

"It may not be amiss here to say that in all these proceedings, whether before the court or in the contest forced upon labor by the Buck's Stove and Range Co., no element of personal malice or ill will enters. Labor is earnestly desirous of entering into friendly relations with employers, and this is none the less true of its desire to reach an honorable adjustment and agreement with the Buck Stove and Range Co. So long, however, as that Company continues in its hostile attitude to labor, denying it the right to organize, discriminates against union members, and refuses to accord conditions of employment generally regarded as fair in the trade, *it must expect retaliatory measures*; these measures, always, however, within the law and for the purpose of ultimately reaching an honorable, mutually advantageous agreement.

"The publication of the Buck's Stove and Range Co. on the 'We don't patronize' list of the American Federation of Labor is only an incident in the history of the case. These stoves might have been let as severely alone by purchasers if they had never been mentioned on that list. It is not the matter of removing that firm from the list against which we primarily protest. It is this injunction invading the freedom of the press.

"Justice Gould, in one portion of his opinion, says: 'Defendants (The American Federation of Labor) have the right either individually or collectively, to sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff's stoves; they

have also the right to decline to traffic with dealers who handle plaintiff's stoves.'

"Here he states precisely the whole case of the American Federation of Labor. This is what we have done. This is the sum total of labor's offending. The publication of the Buck's Stove and Range Company and other firms on the 'We don't patronize list' is merely giving truthful information at the request of our members as to whether or not certain firms employ union men and concede the other conditions of employment usually granted by those concerns which recognize union labor.

"It would seem that having made the above quoted statement, Justice Gould would have found in it the reason for a refusal to issue the injunction. He, however, goes on to assume that there has been some unwarrantable interference with the plaintiff's business, though neither in his opinion nor in the injunction itself does he make it clear how he arrives at the conclusion that the union course was any other than as indicated in his own language."

Thereafter, in the March, 1908, number of the *American Federationist* respondent Gompers published the following statement (Record, p. 275):

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck stove or range. No, not even to buy a Loewe hat."

In April, 1908, the respondents Gompers and Morrison sent to each of 30,000 unions of the A. F. of L. Sulzer's speech, in the body of which, unrelated to what was before and after in it, appeared the foregoing statement (Record, p. 340).

In the April, 1908, *Federationist*, he published the following (Record, p. 275) and repeated it in the July, 1908, number (Record, p. 639):

"The temporary injunction issued by Justice Gould of the Court of Equity, of the District of Columbia, in the (Van Cleave) Buck's Stove and Range Company of St. Louis against the American Federation of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia.

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck stove or range. No, not even to buy a Loewe hat."

In the April, 1908, *Federationist*, in an official letter addressed to their State branches and central bodies, respondents Gompers and Morrison made the following statement, having no relation to the rest of the letter (Record, p. 278) :

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck Stove and Range Company of St. Louis.

"Fellow-workers, be true and helpful to yourselves and to each other. Remember that united effort in the cause of right and justice must triumph."

Respondents Gompers and Morrison, as President and Secretary respectively of the A. F. of L., sent to all the State branches and central bodies of their organization a circular letter signed by them as such on April 30, 1908, which contained the following statement (Record, p. 639) :

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck Stove and Range Company of St. Louis.

"Fellow-workers, be true and helpful to yourselves and to each other. Remember that united effort in the cause of right and justice must triumph."

In the May, 1908, *Federationist*, respondent Gompers published the following statement (Record, p. 638):

"I want to assure you on my word of honor that so long as I live I will never buy a Loewe hat nor a Buck's stove or range until these gentlemen come into agreement with organized labor and grant us conditions of fairness. Then they will get support and help. Until then, you may call it by any other name—boycott or no boycott—but I won't buy your hats, anyhow."

On the 19th of April, 1908, in the course of a public address to a large gathering of working people in the city of New York, respondent Gompers said (Record, pp. 325-326):

"You can not make me buy anything I do not want to buy. I can tell my friends to do likewise, and they have a right to do what I have a lawful right to do, and I have a legal right to tell them to do. No man has a vested right in my patronage. I have a right to bestow it; I have a right to withhold and transfer it to any one else, and I want to say this about that, injunction or no injunction, I won't buy a Loewe hat nor a Buck's stove or range."

And in a public address delivered before a large gathering of working people on May 1, 1908, at Chicago, respondent Gompers made the following statement (Record, p. 638):

"I might say just parenthetically about the hatters' case that you are not now permitted to boycott the Loewe hats, but I want to call your attention to the fact that there is no law compelling you to wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. That applies equally to Mr. Van Cleave's stoves and ranges. And, by the

way, I don't know why you should buy any of that sort of stuff. I won't; but that is a matter to which we can refer more particularly in our organizations."

Respondent Gompers published the same statement in the June, 1908, *Federationist* (Record, p. 278).

II. In March, 1909, this court modified and affirmed the injunction of the lower court. Thereupon respondent Gompers stated in the April, 1909, *Federationist*, as follows (Record, pp. 725, 741) (*italics are ours*):

"By this recent decision, the American Federation of Labor is still enjoined from maintaining a boycott against the Van Cleave Buck's Stove and Range Company, but we have said, *and now repeat*, that there is no law compelling union men and their friends to buy a Buck's stove or range, and surely no court order can have that effect."

And in the same, April, 1909, *Federationist*, respondent Gompers published the following article (Record, pp. 725, 727) (*italics are ours*):

"A SELF-INFLICTED BOYCOTT."

"If ever there was a self-inflicted and personally conducted boycott, it has been that engineered by the Van Cleave Buck's Stove and Range Company against itself. Its hostile, sensational and unjust attacks upon the men of labor and their organization have supplied the material for keeping the boycott fresh in the minds of all purchasers. It has been the action of the Buck Stove and Range Company itself, far more than anything labor has done, which has made this the most spectacular boycott of our time.

"While the Buck's Stove and Range Company was published on the 'We don't patronize' list of the *American Federationist*, along with a number of firms whose

relations with organized labor were unfair, yet this firm attracted no more attention than many of the others until *Mr. Van Cleave* through his man Brandenburg and the Pinkerton and Turner detective agencies began a crusade of character assassination against the men who had devoted their lives to securing the rights and liberties of their fellow-men. Mr. Van Cleave, *being President of the Buck's Stove and Range Company*, and also President of the National Manufacturers' Association, all his hostile acts took on an intensified meaning to men of labor. The real activity in the boycott *began* when an application for an injunction against the American Federation of Labor to restrain it from boycotting this firm followed the personal attacks upon the men of labor. Then, indeed, the union men *and their friends* from the Atlantic to the Pacific sat up and took notice and remembered the unfair standing of this firm when they were buying goods.

"When the temporary injunction was issued prohibiting the exercise of the right of free press and free speech, and the daily press rang with statements of the case in relation to the Buck's Stove and Range Company, then, indeed, did many people who had not been concerned with the attitude of labor in any other boycott, conclude that they would not purchase such goods. Then there was the making permanent of the temporary injunction, and the *appeals for funds* by the American Federation of Labor with which to carry the case to the higher courts. There was the President's *report to the convention, the actions of two conventions—all despite the clause of the original injunction* prohibiting the exercise of free press or free speech in relation to the Buck Stove and Range Company. It was these things that kept the boycott fresh in the minds of the workers and their friends and aroused the most hostile interest. Every hostile move of the Van Cleave Buck Stove and Range Company, every action *leading to greater publicity of the case*, increased the boycott. It must be remembered, too, that the

injunction did not, and does not *apply beyond the District of Columbia.*

"The labor press of the country and the official journals of the various trades felt entirely free to publish the non-union and hostile status of the Van Cleave Buck's Stove and Range Company, and to comment freely upon the original injunction and contempt proceedings. The institution and prosecution of the proceedings for contempt of the injunction and the sentence of Gompers, Morrison and Mitchell to imprisonment for contempt made every union man and every patriotic citizen realize that, while constitutional rights are greater than property rights, a strong effort was being made to establish the contrary. By a perfectly understandable mental process all these happenings kept before the public the fact that labor had a formal boycott against the Buck's Stove and Range Company; hence, we repeat, the Buck's Stove and Range Company has been the most potent agent in fastening upon itself a boycott—primary, secondary and possibly everlasting—because it has assumed that the courts of the land would bolster up its every attack upon the workers, regardless how far it invaded the inherent and constitutionally guaranteed rights of the people."

At page 20 of appellants' brief it is claimed that this editorial was improperly introduced as rebuttal. Called as a witness on his own behalf, Mr. Gompers had testified (*e. g.*, pp. 411, 420, 421, 422, 468, etc.) that none of his various editorials, reports, speeches or other public utterances had been made for the purpose of aiding, assisting or abetting a boycott against the Buck's Stove and Range Company, *because there was no boycott after December 23, 1907.* The editorial in question was offered in rebuttal of these statements, to show that he not only realized that they were a most effective means of accomplishing that very purpose, but had expressly so declared in an editorial

published while these very acts were being done by him. That it did rebut his testimony in the above regard, or at least fairly tended to do so, is apparent from the statement of the opposing brief, at page 20, that it was "at the most a statement of belief as to the probable effect of certain things referred to," namely, these utterances of his which he testifies were made for no such purpose. The claim of the brief that the editorial was a statement of belief as to the effect of the publications, to which he was so large a contributor, given long after the occurrence of the events mentioned, may be left to the fact that it appeared in the April, 1909, *Federationist*, more than two years before the injunction had ceased to operate, during all of which period the publications were being continued. It also directly contradicted his testimony that there was no boycott after December 23, 1907.

III. That the boycott was still kept up in November, 1909, is shown by the report of respondent Gompers to the Toronto convention of the American Federation of Labor in that month, by the report of the Committee on Boycotts thereon, and by the speech of the respondent Mitchell in support of it, all subsequent to the decision of the Court of Appeals on November 2, 1909, affirming the sentences in the previous contempt case.

In this report respondent Gompers said (*Record*, pp. 727, 728, 742, the italics being ours):

"THE BOYCOTT—JUDICIAL OPINION."

"While the discussion of greater issues in the past year has tended to relegate to the background such rights as that of the boycott, yet I should be recreant in my duty were I to remain silent upon that subject, and thus, perhaps, strengthen an impression which has been assiduously given out by our opponents that the boycott—that is, the right to withdraw patronage, to

bestow it upon whom we please—has been withdrawn from the workers of the country during the legal proceedings *in relation to the injunction secured by the Buck's Stove and Range Company.*

"It will be remembered that the injunction was sought primarily to restrain the people in their right to quit buying Buck stoves and ranges. It overreached itself so far that the right to freedom of speech and press became involved. However, no consideration of the injunction has been possible by the courts without taking up the principle involved in the boycott.

"We have always held, and we still hold, that the workers, or any of the people, have a right to withhold or bestow their patronage as they choose; that they have the right to *advise friends and sympathizers of this action* and of the reasons therefor. It is hardly necessary to state that in the case of the workers the *unfair attitude of the dealer in question* has always been a reason for withdrawal of patronage. It has been made clear that he refused to pay the standard rate of wages and to agree to other equitable conditions which the workers seek through their organizations, and hence the withdrawal of patronage. The boycott declared by other citizens has sometimes been placed for other reasons, and they can safely be left to the defense of their own actions. I only wish to point out, in passing, that the boycott is by no means a weapon used by the workers alone. It is one of those inalienable rights which are at all times used by all people. The right to withhold or bestow patronage is one of those things which can neither be *enjoined, forbidden nor punished.*"

The above statement of respondent Gompers was referred by him to the Committee on Boycotts, which reported thereon as follows (Record, pp. 729, 730):

"We concur with the sentiment expressed by the Committee on Boycotts at the Norfolk convention that

the boycott should only be resorted to after all efforts at adjustment have failed, but, when instituted, it should be made so effective that speedy agreement between the firm and union affected will follow. In speaking of the boycott, the President, in his annual report, has this to say: (Here follows the above statement quoted from Gompers' report, and the committee's report concludes as follows): * * *

"We say that, when your cause is just and every other remedy has been employed without result, boycott; we say that when the employer has determined to exploit not only adult male labor but our women and our children, and our reasoning and appeal to his fairness and his conscience will not sway him, boycott; we say that when labor has been oppressed, brow-beaten and tyrannized, boycott; we say when social and political conditions become so bad that ordinary remedial measures are fruitless, boycott; and finally we say, we have the right to boycott, and we propose to exercise that right. In the application of this right of boycott, to paraphrase the President, we propose to strive on and on."

This report of the Committee on Boycott was adopted by the convention, but *before* it was voted on the respondent Mitchell addressed the convention in support of it and said in part as follows (Record, pp. 214, 494):

"I take advantage of this occasion to record as positively as I can my complete concurrence in the declarations of the committee. I recognize that, at this time, every statement made by the representatives at this convention and particularly by those who on next Monday must present themselves in court at Washington, is being scrutinized with the greatest care. I want the delegates to this convention, I want the people of the United States to know that, so far as I am concerned, I shall not speak defiantly, but, let the consequence be what it will, I shall not surrender any right guaranteed

to me by the Constitution of our country. I am not sure how much mental and physical suffering will be necessary to make me submit, but if I know myself, and I think I do, no amount of physical pain or mental suffering will persuade me that I have not the right to spend my money where I please, the right to speak and print whatever I choose, being responsible under the law for the abuse of that right.

"Speaking generally of the boycott, it may be, if properly and advisedly used, one of the most humane and beneficial weapons in the hands of organized labor. Used ill advisedly, it may prove a detriment to us, but whether it be a benefit or a detriment, each man for himself must determine where he is going to bestow his patronage. I deny most emphatically that any merchant or any manufacturer has a property interest in my patronage. It is mine to bestow or to withhold as suits my own pleasure, and any attempt through the subtleties of the law to take from me the absolute right to spend where I please my own money—any attempt to take from the people the right to spend where they please their own money—must be resisted at any cost and opposed to the very limit.

"Now, Mr. Chairman, this is the first time since this convention that I have had anything to say about the proceedings in court at Washington. I have information that cognizance has been taken there of utterances by men on the floor of this convention, and I want to go clearly on record, so that no man may misunderstand my attitude, and that no man, however designing, may be able to distort my attitude. I propose in the future, as in the past, to exercise the right guaranteed me by the founders of our country. I propose—if I am sent to jail—when I come from there, to declare again that I shall not, for myself, purchase any product of the Buck's Stove and Range Company. I make this declaration not to tickle the ear of any man; I make it solely that I may declare publicly the conviction that is within me. * * * I want to repeat, so far as I am concerned—let the consequence be what it may—I am

going to assert and exercise while at liberty the rights guaranteed by the organic law of the country."

The printed minutes of the Toronto convention, containing the foregoing statements, were circulated to the extent of thousands of copies while the injunction remained in force, and after the editorial of April, 1909 (*supra*, p. 33), had shown that Mr. Gompers knew and had invited the attention of his followers to the effect in perpetuating and intensifying the boycott which such publications would have.

IV. That the boycott against the Buck's Company lasted until July 20, 1910, when the *respondents stopped it*, is shown by the reports of respondents Gompers, Mitchell and Morrison as members of the Executive Council to the convention of the American Federation of Labor of 1910 (Record, pp. 536 and 537), as follows:

"AT PEACE WITH THE BUCK STOVE AND RANGE
COMPANY."

"At our June meeting Vice-President Valentine called attention to the fact that by reason of the demise of Mr. J. W. Van Cleave, the Buck's Stove and Range Company went into the hands of a new management and that an opportunity was afforded to successfully renew the efforts at the adjustment of the dispute with the company where it had failed some years before under the old management. We authorized him to make such effort as he could; that we were desirous, as we always have been, of coming to an honorable adjustment of any difficulty which we might have with employers. Through his efforts a conference was held at Cincinnati, July 19, 1910. * * * The conference lasted all day and until late in the night and an agreement reached. The agreement was published in the

September issue of the *American Federationist*. * * *
 The new management of the company has declared that it has always been its policy to live in terms of good will and friendly relations with organized labor, and that it proposes to continue to conduct its business affairs on these lines in the future. We deem it our duty to state to organized labor, its friends and sympathizers, that the industrial trouble between labor and that company has come to an end by mutual, honorable adjustment, and that the company, like all other employers fairly disposed towards organized labor, is entitled to the courtesy, consideration and patronage of all."

The notice of the termination of the boycott referred to in the above report by the respondents Gompers, Mitchell and Morrison was as follows (Record, p. 537) :

"OFFICIAL NOTICE.

"HEADQUARTERS OF THE AMERICAN
 FEDERATION OF LABOR,
 "WASHINGTON, July 29, 1910.

"To All Whom It May Concern:

"An honorable agreement has been reached between the Buck Stove and Range Company and the American Federation of Labor and its affiliated organizations primarily interested. The long-drawn-out industrial dispute has been adjusted. The new management of the Buck Stove and Range Company has always been, is now, and proposes to continue friendly to organized labor. Labor in its struggle for the workers' rights earnestly seeks agreements with employers who are fair-minded and fair in their attitude towards and dealings with organized labor. Such is the position of the Buck Stove and Range Company and the American Federation of Labor. The company is now entitled to and should receive the courtesy, consideration and patronage of labor, its friends and sympathizers can give

it. Secretaries are requested to read this notice at the meetings of their respective organizations, and labor and the reform press please copy.

"By order of the Executive Council.

"SAMUEL GOMPERS, *President,*
American Federation of Labor.

"Attest:

"FRANK MORRISON, *Secretary of the*
American Federation of Labor."

The agreement referred to in the above report and circular contained the following provisions (Record, p. 539):

"3. That the labor organizations and interests herein named shall jointly make known and publicly declare that all controversy or difference with the Buck's Stove and Range Company of St. Louis has been satisfactorily and honorably adjusted.

"4. That the Buck's Stove and Range Company through their representatives, Messrs. Cribben and Hogan, agree that it will withdraw its attorneys from any cases pending in the courts, which have grown out of the dispute between the American Federation of Labor, and any of its affiliated organizations on the one hand, and the Buck's Stove and Range Company on the other, and that the said Company will not bring any proceedings in the court against any individual or organization growing out of any past controversy between said Company and organized labor.

"5. That a copy of this memorandum and agreement will be published in the next issue of the official journals of the organizations participant in this conference, and in printed form placed conspicuously in the several labor departments of the Buck's Stove and Range Company, and as far as practical every publicity be given to the satisfactory agreement reached between the Buck's Stove and Range Company and the American Federation of Labor."

The foregoing facts taken from the Record, supplemented as they are by much other testimony, establish the fact that the boycott which both the Supreme Court of the District of Columbia and the Court of Appeals sought to stay by injunction, was continued with unabated activity, in spite of those injunctions, until July 20, 1910, when the respondents stopped it. There is no foundation whatever for the assertion in the respondents' brief, or in their testimony, that the boycott ended on the filing of the bond on December 23, 1907, or for their other remarkable assertion that there is no evidence in the bill of exceptions *tending to prove* such continuance of the boycott. Not only was there evidence tending to show the continuance of the boycott subsequent to December 23, 1907, but the undisputed evidence in the case completely establishes the fact that it was continued down to July 20, 1910, nearly three years after the injunction was granted.

Secondly, with reference to the assertion in the respondents' brief and specifications of error that there is no evidence in the Record TENDING TO SHOW that either of them was guilty of the charges against him:

The charges were, of course, as stated in the reports of the committee, that each of the several publications, statements and acts alleged against the several respondents was in wilful violation of the injunction decree in the Buck's case, was done for the purpose of inducing others to violate and thereby to defeat it, and that in each of the publications, statements and acts set forth in the several reports, the respondents were guilty of contempt of court, and had subjected themselves to punishment therefor.

In addition to the probative effect of the various quotations from the Record already made in this brief under the first head, we proceed now to direct the attention of

the court to some of the other items of proof in the Record showing this claim of the respondents to be also without merit.

I. In November, 1908, at a public reception in Washington, D. C., given to respondents Gompers and Morrison, the former made an address, afterwards published in the January, 1909, *Federationist*, of which he was editor, and circulated by Morrison in his capacity as secretary (Record, pp. 372, 373), introduced in evidence by the respondents themselves. When he made that address, the several respondents had been cited in court to answer to the charges against them in the former contempt proceedings. Those charges had been published in the September, 1908, *Federationist*, and will be found in the present Record (pp. 280-296). An examination of these will show that they embrace not only all that is charged against them in the present proceedings as done by them prior to July, 1908, but also many other publications, statements and acts by them which were introduced in evidence in the present proceedings. The respondents had appeared in court and answered to those charges under oath. The testimony against them had been taken, the case had been argued and submitted to the court for its decision, and was soon, on December 23, 1908, to be decided. In this situation of affairs, respondent Gompers publicly stated as follows in regard to the truth of those charges (Record, pp. 372, 373; italics ours) :

“When injustice is done and men of labor are made to suffer therefrom, by the gods there is some satisfaction in having the reserved right to protest. We are confronted with a situation today which is exceedingly peculiar. With my friend, ‘Jim’ O’Connell, who does not want to go to jail, and Frank Morrison, John Mitchell, and myself, who, perhaps, will have to go to

jail, it is only a difference of degree. 'Jim' O'Connell is just as thoroughly enjoined as we have been—it is simply a circumstance that he has not been called upon to execute a decision which he helped to render as a member of the Executive Council and delegate to the convention of the A. F. of L.

"The convention decided on a certain course and Frank Morrison and I carried it out. I do not want to discuss the injunction after the very elaborate discussion by Mr. Morrison, but I want to present one feature which he did not touch upon.

"You know it is a principle in law, a principle in common sense among all English-speaking people, that a man is presumed to be innocent until he is proved to be guilty.

"It devolves upon the government, if the government charges a citizen with a criminal or any unlawful conduct, to prove this man or woman as having committed the crime.

"This is the order all the way through except in the injunction case. In an injunction case you are enjoined, but if you are enjoined from doing things which are not unlawful, and you still continue to do them, the judge issues an order for you to show cause why you should not be punished. Mark you, it does not then devolve upon the court or upon the plaintiff to prove the guilt of the accused; he must show cause why he should not be punished. In other words, the very order of the law is reversed. He must prove his innocence.

"Now you know the Supreme Court of the District of Columbia has issued an injunction against the A. F. of L., its executive officers, our affiliated organization and their members and friends and sympathizers, and agents, attorneys and counsel, and conspirators and co-conspirators and what not, and among these you are included. The court issued the injunction prohibiting us from publishing, from printing, from writing, from speaking, from whispering, that the Van Cleave Buck's Stove and Range Company is

unfair to organized labor, and for any one to publish, to print, to write a letter or to speak of this is in violation of the terms of the injunction, yet the Constitution of the United States provides that the right of freedom of speech and freedom of the press and public assemblage shall never be denied or abridged. In other words, an injunction of such a character is an invasion of the constitutionally guaranteed rights of every man and woman in this country.

"I have said, and I now want to repeat here, not in bravado, but in full consciousness of the responsibility with which this statement may be interpreted, that when it comes to a choice between obeying an injunction denying me the right of free speech, free expression of the thoughts that come to my mind and which are not in violation of the laws of my country, I shall have no hesitancy in standing upon my constitutional rights. We have a dispute with the Van Cleave Buck Stove and Range Company; I have been enjoined from saying that I won't buy a Buck stove or range, and I won't, and because I have said this in several ways, by discussion of the case, editorially, in the *American Federationist*, and Frank Morrison has sent out the *American Federationist* containing these things I have said, and because John Mitchell was presiding over the convention of the United Mine Workers when a motion was placed before that body advising the members of the Mine Workers not to buy a Buck stove or range, we have been tried for contempt—that is, we have been called upon to *show cause why we should not be sent to jail, and I could not show cause.*

"The things I have been charged with I did. I have not denied them. I have discussed them on the platform, as I discuss them here. I have written circulars about them. Secretary Morrison sent them out, and I ask you now to place yourselves in my position. What would you do?"

II. On December 23, 1908, the trial court rendered its decision in the former contempt proceedings against all the

respondents. Justice Wright read to all the respondents, *verbatim*, his opinion, introduced in evidence in this case by the respondents as printed in the Washington Law Reporter, Vol. 36, p. 822 (Record, pp. 524, 452). An examination of that document, introduced in evidence by the defendants, will show that it recited at great length the declarations, statements and acts of the several respondents, and after thus reading it to them, the court called upon each of them to state whether he had anything to say why judgment should not be pronounced. Thereupon, these respondents severally replied at considerable length. These replies were published by the respondents in the *Federationist* of February, 1908, and are found in the Record, pp. 654-656.

Thereafter the respondents, Gompers, Mitchell and Morrison, published in the *American Federationist* of February, 1909, a joint editorial, written by them in collaboration under the title "The Decision Reviewed, by Samuel Gompers, John Mitchell, and Frank Morrison." That editorial also was introduced in evidence in this case by the respondents, and is to be found in the Record (pp. 431-447). It contained the following statements, among others (the italics are ours):

"With the exception of the remarks made to the court as to why sentence should not be pronounced, the defendants have uttered no word in review of this decision. We (Gompers, Morrison and Mitchell) regard it as an imperative duty we owe to all the people to do so now and here.

"In considering and discussing the decision rendered and the penalties imposed by Justice Wright, we shall not—even if we were capable of doing so—enter into competition with the honorable court in the use of invective, rancor, or scathing denunciation; we shall, despite the great provocation, at least preserve our dig-

nity. But we do feel called upon most respectfully to dissent from and protest against the court's unprecedented and unwarranted flagellation of the cause and of the people we have the honor to represent. Justice Wright touches upon the *real issues of the case* when he says:

"*No defense is offered save these.* That the injunction:

"'1. Infringed the constitutional guarantee to us of freedom of the press.

"'2. Infringed the constitutional guarantee of freedom of speech.'

* * * * *

"When a judge issues an injunction—like that of the Buck's Stove and Range Company—it is the judge who defies the law, and not the citizen who refused obedience to his injunction mandate, which would deprive men of their constitutional rights.

* * * * *

"Justice Wright said in the opening paragraphs of his decision: 'The defendants, Samuel Gompers, Frank Morrison, and John Mitchell, are charged with wilfully violating the terms of the preliminary injunction herein heretofore issued after a hearing before Mr. Justice Gould. The matter of the charge is not to be understood or intelligently determined without a comprehension of the status of persons and conditions at the time the injunction issued, and these in turn can only be come at by a good understanding of the nature and cause of the original controversy between the parties and the situation which had developed from the confessed boycott established against the plaintiff and its customers by the defendants and others.'

"Any reasonable person would suppose that in order to arrive at 'a good understanding of the nature and cause of the original controversy' Justice Wright would have cited and weighed the evidence given by both sides. Instead, he quotes approvingly the testimony given in behalf of the Buck Stove and Range Company on the original injunction and in the contempt proceed-

ings, and practically nothing from the reply made by the defendants.

"This testimony was misleading in many instances and we have shown it to be so, particularly in its intent. The American Federation of Labor directed its defense *entirely against the unconstitutionality of the injunction itself*. The American Federation of Labor retained eminent legal counsel and was advised that the original injunction issued by Justice Gould was in opposition to the Constitution and *therefore null and void*. * * *

"Justice Wright, in his review of the case, omitted a vital fact, a fact which changed the whole aspect of the case and left only the higher constitutional issue to be regarded. The fact to which we refer is this:

"When Justice Gould's temporary injunction order came into effect—that is, on December 23, 1907—the American Federation of Labor complied with it, and removed the Buck Stove and Range Company from the 'We don't patronize' list, and it has not been printed on that list since that time.

"We did not concede thereby that we were wrong in placing the firm upon that list, but we took this action in order to rid the case of all technicalities, pending the appeal to the higher courts and to make perfectly clear that the injunction in prohibiting free speech and freedom of the press had invaded so important a constitutional right that the original issues sank into insignificance.

"Thenceforth, the only way in which we could be charged with violating the injunction was on the theory that we protested against its denial of the right of free speech and the freedom of the press (see original injunction quoted in Justice Wright's decision).

* * * "Justice Wright quotes at some length from newspaper accounts and from the report of Samuel Gompers, President of the American Federation of Labor, to conventions in years preceding the issuance of the injunction, to show that there was a '*predetermination to violate*.'

"We believe that the public generally will agree with us that such quotations can not possibly be any proof that the injunction was actually violated. * * *

*"Mr. Mitchell is charged with and admits having presided at a convention of the United Mine Workers at which a resolution was adopted declaring as 'un-fair' the products of the Buck Stove and Range Company. It was Mr. Mitchell's duty as President of the miners' organization to preside over this convention. He had no knowledge that a resolution upon the subject was to be considered, and when it came before the convention he was so little impressed with its significance that he did not even remember the subject of the resolution until the contempt proceedings were instituted. However, even though he were conscious of the full import of the resolution referred to, he committed no offense against the law by retaining his position as presiding officer of the convention when the resolution was adopted. He had, of course, three alternatives, none of which a self-respecting man could have availed himself. He could have resigned his position as President of the United Mine Workers of America, or he could have called some other member to take the chair, thus shirking his own responsibility by placing it upon the shoulders of another, or he could have become the advocate and defender of the Buck's Stove and Range Company and opposed the passage of the resolution. The injunction did not require Mr. Mitchell to advocate the cause of this concern; he was not commanded to defend its attitude in the controversy with its employees; but it seems that his failure to do so constituted an offense against the court, for which he is sentenced to prison. * * **

*"As a further illustration, take the case of Mr. Morrison. He is Secretary of the American Federation of Labor. The charge against him is that he caused to be mailed the printed official proceedings of the Norfolk convention and the official magazine, the *American Federationist*, as was his imperative duty. If he had placed in the mails matter which was libel-*

ous, treasonable, or seditious he would be equally responsible with the author of such documents for those acts; but the freedom of the press and the freedom of speech involves the distribution through lawful channels of that which may be printed or uttered. He signed the urgent appeal, and pray, after all, in what does the urgent appeal offend? The American Federation of Labor, its officers, its affiliated unions, their members, friends, sympathizers, attorneys, and agents throughout the length and breadth of the country, *had an unvarranted injunction served on them, enjoining them from doing things they had a perfect legal right to do.* * * *

"In the case of Mr. Gompers, in addition to what has already been stated, as soon as the injunction became operative, he took the name of the company in question from the 'We don't patronize' list, and from that time until this the name of the company has not appeared thereon. He discussed the injunction and the principles involved in the injunction, both in print and upon the platform. * * *

"Some carping critics have said, 'Why not obey the terms of the injunction until the courts of last resort shall have rendered their decision?' We answer that such a course was absolutely impossible. It would have perverted and suppressed the lawful proceedings of a convention of the American Federation of Labor, a lawful gathering and body. It would have conceded the surrender of the principles of freedom of speech and of the press. * * *

"We wish to call special attention to our exact position in relation to the charge of contempt. We hold that we can not be guilty of a violation of the injunction *because the injunction being in contravention of the Constitution is therefore null and void. We could not very well violate an injunction which has no constitutional standing or existence. Hence, we can not be in contempt.* It does not seem that it should be considered evidence of violation of the injunction to

publish the fact that the injunction has been issued and to point out what it enjoins or prohibits.

"To charge us with contempt because the *American Federationist* was delivered by mail to some distant points after the undertaking (which put the injunction in force) was filed, *is making the post office an accessory.*

"The injunction became operative December 23, 1907, when the Buck Stove and Range Company filed the bond required by the court. The January issue of the *American Federationist* was in the mails before that date. It will be clearly observed that we had no means of knowing when the required bonds would be filed or that they would be filed at all. It is rather far fetched to hold, because we mailed the magazine we had a right to mail, that we became guilty of violation of the injunction because it was delivered after the injunction was in force, especially as we had no means of knowing when the injunction would become operative.

"We had a right to disregard the injunction in those particulars, of the right of free press and free speech, but we realized at all times that we did so at our peril—that is, the peril of being judged guilty of contempt and of receiving the most extreme sentence which any judge might impose. All this has happened. We realized from the beginning that we might have to sacrifice our personal liberty in order to defend the liberties of the people of our country. We have no complaint to make on personal grounds. We stand ready and willing to serve the sentence imposed if the higher courts shall so adjudge. * * *

"In another portion of this issue we publish in full Justice Wright's decision, finding Samuel Gompers, John Mitchell, and Frank Morrison guilty of violating the injunction obtained by the Buck Stove and Range Company. We republish the decision from the Washington Law Reporter, the official paper of the court. The *American Federationist* is printed at the same office, so we are able to reproduce Justice Wright's

decision in *the original type, as used in the official printed decision*. There were a few typographical errors in the original decision, but for the sake of accurate reproduction we refrained from correcting them."

The foregoing joint editorial by the respondents Gompers, Mitchell and Morrison in the February, 1909, *Federationist*, was published on January 24, 1909, and of course was written by them before that date. On January 22, 1909, the respondent Mitchell, in the course of an address made before the convention of the United Mine Workers of America, used the following language, his address being introduced in evidence by the defendants in this case (Record, pp. 499-505). The court will notice the similarity of language between what is here quoted and that of the preceding editorial in relation to the same topic (*italics ours*):

"The court says further that I presided as President of the United Mine Workers at a convention here at which a resolution was passed violating that injunction. There are no doubt in this convention hundreds of delegates who were here a year ago who knew that I had no *knowledge that the resolution was to be introduced*. They know I had nothing to do with its preparation, with its consideration or with its introduction. It came before us as all other resolutions did. *As chairman, what was I to do? I had, it is true, three alternatives*: I might have resigned the presidency of the United Mine Workers of America; I might have been cowardly and called some one else to the chair and let him accept the responsibility—*ask some one else to accept the responsibility of what I dared not do myself*. Or I might have accepted the last alternative—I might have stood up before you and advocated the cause of a company that was having trouble with its employees. Does the man who respects me least

imagine for a moment I would become the advocate and defender of a company that was at variance with its employees? Would I stand here and fight the cause of a corporation that was trying to destroy the union in its employment? What could I do? What could any self-respecting man do? *Would he not have done as I did?*

"It is true that technically I was guilty of violating the injunction when I presided over the meeting that adopted this resolution; but I am no more guilty than any other man who was present in the convention at that time. Indeed, I presume that before a jury I would be considered less guilty, because I did not vote for it and every one else did. I did not vote for it because I was presiding."

In his report to the convention of the American Federation of Labor, in November, 1908 (Record, pp. 223-225), respondent Gompers made the following statement, among others:

"Your attention is especially called to a feature of the case of this injunction. If all the provisions of the **injunction are to be fully carried out**, we shall not only be prohibited from giving or selling a copy of the proceedings of the Norfolk convention of the A. F. of L., either a bound or unbound copy, or any copy of the *American Federationist*, for the greater part of 1907 and part of 1908, either bound or unbound, but we, as an Executive Council, will not be permitted to make a report upon this subject to the Denver convention.

"Unless we violate the terms of this injunction, we are prohibited from referring to the case at all, either in our report to the convention or to others. Should a delegate to the convention ask the Executive Council what disposition has been made, or what the status of the case is, we shall be compelled to remain silent. For one, I am unwilling to be placed in such a position I have neither the inclination nor the intention of vio-

lating the process of the court, but I can not see how it is possible for us to hold up our heads as honest men and still refuse to give an accounting to our fellow-workers, and to the public as to the status and outcome of this cause.

"The Executive Council has been advised, that in this report to you I shall fully cover this subject, thus making it unnecessary for duplication in the report which the Executive Council and I will jointly make to you.

"As a citizen and a man, I can not and will not surrender my right of free speech and freedom of the press. * * *

"It is impossible to see how we can comply fully with the court's injunction. Shall we be denied the right of free speech and free press simply because we are workmen? Is it thinkable that we shall be compelled to suppress, refuse to distribute, and kill for all time to come, the official transactions of one of the great conventions of our Federation?"

The proceedings of the convention of 1907, thus referred to, contained the unfair list of the American Federation of Labor with the name of the Buck Stove and Range Company in it. It also contained a report by respondent Gompers (Record, pp. 615-619) with reference to the suit of the Buck's Stove and Range Company against the American Federation of Labor, *et al.*, and a report of the Executive Council relative to the same subject, and the resolution No. 49, hereinbefore quoted from in this brief, and a report by Treasurer Lennon, all of which were full of matter not only in violation of the terms of the injunction, but calculated to excite the members of their organization and their friends to carry on the boycott of the Buck's Company and to defy the injunction (Record, pp. 615-626). For instance, in Gompers' report, it is stated as follows (Record, p. 619):

"The attempt to enjoin or prevent the publication of the 'We don't patronize' list of the American Federation of Labor, whether by injunctive process or other judicial or legislative means, would be in direct violation of the constitutional guarantee and would indeed abridge free speech and a free press. In all the land there is neither law nor power to enforce such a decree."

And in the report of Treasurer Lennon (Record, p. 615) it was stated as follows:

"Injunctions do not scare us, for we are law-abiding citizens. The Buck's Stove is not calculated to warm the cockles of the heart of any trade union—no, nor of any man or woman that stands for a square deal. I do not mean a square deal in name only, but I mean a square deal as the carrying out of the Golden Rule in our industrial life. We propose to keep warm without the use of any Buck's stove, injunctions to the contrary notwithstanding."

The respondent Morrison sent out to the various unions 6,000 copies of these proceedings after the injunction became operative (Record, p. 608), and 600 copies of the same were distributed by him among the delegates of the 1908 convention (Record, p. 612).

Moreover, between the adjournment of the Norfolk convention of the American Federation of Labor, late in November, 1907, and the decision of Justice Gould, December 17, 1907, granting the preliminary injunction, there was prepared and widely distributed for the information of the general public a pamphlet entitled "Labor Aroused," which the respondents put in evidence in this case (Record, pp. 676-718). It is difficult to see what they sought to prove by it, but its pages will well repay perusal, for it shows

the hostile attitude towards the Buck's Stove and Range Company and its president, of the army of followers and sympathizers of the respondents, the extraordinary means that the respondents took to still further arouse and inflame the hostility, and the situation that existed while the respondents continued the line of conduct pursued by them after the injunction was issued. It amply confirmed the statement of the Court of Appeals, in its opinion in the former contempt case heretofore quoted in this brief:

"The boycott waged by the American Federation of Labor against the business of complainant had become so acute and extensive that the terms 'boycott,' 'unfair' and 'We don't patronize,' when used in connection with complainant's name, had acquired such a significance to the organization *and its friends* that the mere printing or uttering of the name in that connection was **a signal to the membership** and their friends not to deal with the complainant or persons having business relations with it."

We quote a few extracts from the pamphlet:

"Before the campaign of lying, slander and personal villification was entered upon, Mr. Van Cleave, President of the National Association of Manufacturers, brought suit against the officers of the A. F. of L. and others to restrain the A. F. of L. from publishing the unfair Buck Stove and Range Company on the 'We don't patronize' list in the *American Federationist*, the official magazine of the A. F. of L.

"3. The special committee of the Norfolk convention made a report strongly endorsing the stand taken by President Gompers and the Executive Council in the matter of publishing the unfair Buck Stove and Range Company and heartily commending their whole course in relation to the National Association of Manu-

facturers. This action is worthy of as careful study as the official reports themselves, because it shows how promptly and unanimously the convention ratified the action of its officers and authorized them to proceed according to their own judgment in accordance with the best interests of labor.

"4. The portion of President Gompers' report dealing with this injunction suit will be found in these pages, also that part dealing with the general policy and hostile tactics of the National Association of manufacturers from the time they began to raise the million and a half dollar war fund to 'educate' them out of existence.

"At the time President Gompers' report was offered to the convention the court had made no decision on the petition by the Manufacturers' Association for a restraining order in the injunction case. That is still the status of affairs at the time this pamphlet was issued. Later developments in the case will be given through the columns of the *American Federationist*.

* * * * *

"5. The report of the Executive Council of the A. F. of L. on the attempt to enjoin the publication of the unfair Buck's Stove and Range Company and their comment on the hostile action of the Manufacturers' Association is given, as it forms part of the history of the affair." (Record, pp. 677-678.)

"Report of special committee on the portion of President Gompers and Executive Council reports relating to the unfair Buck's Stove and Range Company injunction suit (Record, p. 704) :

"The special committee to which was referred the portion of President Gompers' and the Executive Committee's reports dealing with the suit to enjoin publication of the unfair Buck's Stove and Range Company reported as follows:

"Your special committee, to which was referred the subject-matter contained in the reports of President Gompers and of the Executive Council relative to the

suit brought by J. W. Van Cleave, of the Buck's Stove and Range Company, against the American Federation of Labor and its officers, and all matters in connection therewith, begs leave to report as follows:

"We have given the reports, the evidence and all other matters in connection with the suit, our deliberate consideration. There is not the least doubt in our minds but that the suit in question, the scurrilous and scandalous campaign of villification against the officers of our great movement, the rampant antagonism of the worst elements of the capitalist class as manifested in Los Angeles and elsewhere, are all of them of a kind, leading up to and the result of the creation of a million and a half dollar war fund by the Manufacturers' National Association—raised in the effort to weaken and ultimately destroy the effectiveness of our great movement, our movement which protects and advances the interests of the toiling masses of our country against the greed and aggression of those who seek to profit if the toilers are rendered defenseless (Record, p. 704.)

"The suit by Mr. Van Cleave, of the Buck's Stove and Range Company, against our movement is to deprive us of the rights to which we are entitled, the right of free association, free speech, and the freedom of the press, and with all the power which wealth gives our opponents, the exercise of all that power to antagonize our laudable movement and purposes, they would invoke the aid of the courts and seek to persuade the perversion of law to render futile the lawful and proper means to protect the working people of our country from tyranny, greed and injustice. The full statement of the case and the principles and results involved in this suit of Mr. Van Cleave, of the Buck's Stove and Range Company, are fully covered in the report of President Gompers to this convention." (Record, p. 713.)

"The attempt to enjoin or prevent the publication of the 'We don't patronize' list of the American Federation of Labor, whether by injunctive process or other

judicial or legislative means, would be in direct violation of the constitutional guarantee and would indeed abridge free speech and a free press. In all the land there is neither law nor power to enforce such a decree." (Record, p. 710.)

"We propose to contend for our rights upon the ground of freedom of speech, the freedom of the press, in the case of the so-called boycotts and the right of man's ownership of himself, of his labor power, to sell it or to withhold it, and to do all lawful things in furtherance of his interests, whether done singly or collectively, in case of lock-outs, strikes or boycotts." (Record, p. 711.)

The last two of the above quotations from the pamphlet are taken from the report of respondent Gompers to the November, 1907, convention of the American Federation of Labor. What the American Federation of Labor, its members and sympathizers understood by the boycotts conducted by that organization is shown by the report of the Committee on Boycotts at the convention of the American Federation of Labor held in November, 1905, which was adopted (Record, pp. 641-642; italics ours):

"The 'We don't patronize' list is growing year by year. It is true that a few are satisfactorily settled every year, but not a sufficient number to justify the present methods of *this department of the American Federation of Labor*. In the opinion of the committee, one of the reasons for this unsatisfactory result is that it seems a number of organizations that secure an endorsement to place a corporation, firm or person on the 'We don't patronize' list consider this sufficient to insure success and make no further effort to push those boycotts. Therefore, we further recommend that the Executive Council be requested to investigate the methods adopted and carried out by the organizations

directly involved in these boycotts, and if they find that the organizations most interested are not exerting a reasonable effort and properly agitating such boycotts, they shall be authorized to remove from the 'We don't patronize' list such corporations, firms or persons. We would further recommend that all State federations and central bodies take immediate measures to curtail their unfair list, and concentrate all their efforts in placing the ban of unfairness upon the smallest possible number.

"Many of the local declarations of unfairness are endorsed on the spur of the moment, often without a thorough investigation.

"We must recognize the fact that a *boycott means war*, and to successfully carry on a war, we must adopt the tactics that history has shown are most successful in war. The greatest master of war said that 'war was the trade of a barbarian and the secret of success was to concentrate all your forces upon one part of the enemy, the weakest, if possible.' In view of these facts, the committee recommend that the State federations and central bodies lay aside minor grievances and concentrate their efforts and energies upon the least number of unfair parties or places in their jurisdiction. One would be preferable. If every available means at the command of the State federations and central bodies were concentrated upon one such and kept up until successful, the next on the list would be more easily brought to terms, and within a reasonable time, none opposed to fair wages, conditions of hours, but what would be brought to see the error of their ways and submit to the inevitable. Under the present system our efforts are largely wasted, and our ammunition scattered. Let us reduce the boycott to the lowest possible number and concentrate our efforts upon those, and we feel certain better results will be obtained."

From the foregoing quotations from the Record in this case, it is impossible for any reasonable man to doubt that

the respondents were engaged in a common, concerted effort to keep up the boycott of the Buck Stove and Range Company, in defiance of the injunction forbidding them to do so, and that their conduct was plainly in contempt of the court. And if this court were authorized or required to pass upon the weight of the testimony, on this writ of error, we have no doubt that it would concur in the opinion of the lower court that the testimony established the charge.

In this connection it is interesting to note what explanation the respondents attempted to give, in their testimony, of these publications and statements in the *Federationist* and in their circulars. The testimony of Mr. Morrison, at pages 638-639 of the Record, was as follows:

"Mr. Davenport reads to the witness from the February, 1908, *Federationist*, page 102, as follows:

" 'This injunction can not compel union men or their friends to buy the Buck stoves and ranges. For this reason the injunction will fail to bolster up the business of the firm which it claims is so swiftly declining.

" 'Individuals, as members of organized labor, will still exercise the right to buy or not to buy the Buck stoves and ranges. It is an exemplification of the saying that "you can lead a horse to water, but you can't make him drink," and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not to purchase the Buck stoves and ranges.'

"From the March, 1908, *Federationist*, page 192, as follows:

" 'It should be borne in mind that there is no law, aye, not even a court decision, compelling union men

or their friends of labor to buy a Buck stove or range. No, not even to buy a Loewe hat.'

"From the April, 1909, *Federationist*, page 279, as follows:

"'It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor, to buy a Buck stove or range. No, not even to buy a Loewe hat.'

"From the April, 1908, *Federationist*, page 296, official circular of March 20, 1908, as follows:

"'Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck Stove and Range Company of St. Louis.'

"'Fellow-workers, be true and helpful to yourselves and to each other. Remember that united effort in the cause of right and justice must triumph.

"SAMUEL GOMPERS, *President*,

"'Attest: *American Federation of Labor*.

"'FRANK MORRISON, *Secretary*.'

"From the May, 1908, *Federationist*, page 83, statement by Mr. Gompers, as follows:

"'I want to assure you on my word of honor that so long as I live I will never buy a Loewe hat or a Buck stove or range until these gentlemen come into agreement with organized labor and grant us conditions of fairness. Then they will get support and help. Until then, you may call it by any other name—boycott or no boycott—but I won't buy our hats anyhow.'

"From the June, 1908, *Federationist*, page 467, as follows:

" 'I might say just parenthetically, about the hatters' case, that you are not now permitted to boycott the Loewe hat, but I want to call your attention to the fact that there is no law compelling you to wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. This applies equally to Mr. Van Cleave's stoves and ranges. And, by the way, I don't know why you should buy any of that sort of stuff. I won't; but that is a matter to which we can refer more particularly in our organizations.'

"From the July, 1908, *Federationist*, page 531, as follows:

" 'The Supreme Court of the District of Columbia has made permanent the injunction issued by Justice Gould enjoining the American Federation of Labor, its officers, its affiliated unions and their members and friends from declaring that the Van Cleave Buck's Stove and Range Company of St. Louis is on the unfair list of the American Federation of Labor or the publication of that statement in the *American Federationist*. An appeal will be taken to the Court of Appeals of the District of Columbia and if necessary to the United States Supreme Court. The injunction does not compel any one to buy the Van Cleave stoves and ranges, nor has any decree been issued compelling any one to buy a Loewe hat.'

"Witness is asked whether, in view of these *repeated* statements, he says that Mr. Gompers abandoned the boycott. In reply, witness says (p. 1808): 'These publications of speeches and editorials were something he had a right to do, *to comment; to publish a statement of facts and furnish to his readers such facts as he, as an editor, believed they should have.* So far as witness knew or was informed what he was doing in his editorials and otherwise, *was for the purpose of forwarding an effort to secure legislation and carry this case to the Supreme Court of the United States.'*"

Thousands of copies of these *Federationists*, containing the above quotations and many like them, written and published by Mr. Gompers, its editor, were widely circulated by Mr. Morrison, Secretary.

The cross-examination of respondent Gompers on this subject (Record, pp. 476-481), is equally illuminative. A specimen may be quoted, from page 477:

"Q. Why did you wish to advise any one that an injunction could not compel labor or labor's friends to buy the product of the Buck Stove and Range Company?"

"The witness answers, 'An injunction is not a mandamus, and there are not so very many people who are laymen who understand the difference.'

"*Was a mere statement of fact.* Witness had no object except to state a simple fact. There was no intention to carry on, or aid, or abet a boycott against the stove company. Witness states under his oath that there was no intention to carry on or aid or abet a boycott against the Buck Stove and Range Company, or to suggest that they could not buy those things and should not buy them. That was not the purpose. He does not mean to tell the court that he put this in because he feared some of his readers would think they were bound to buy the Buck stoves and ranges or were compelled by the injunction to do so. Is unable to state any purpose of the article other than that it was a statement of facts. Wrote the editorial in this same April number, page 279, and reading as follows:

"'It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range.'

"Its object was nothing more than the statement of a fact. The words, 'It should be borne in mind,' were

simply a phrase witness had become accustomed to using, rather than as to its importance. He used it as a phrase that had no particular significance. The words are a phrase which he had used several times in connection with that and in connection with the discussion of the case, and discussion in connection with many other things. It had no particular significance. It was merely the desire to make a statement of fact. The words, 'It should be borne in mind,' have no significance and were not necessary. It was without the slightest intention to affect the business of the Buck Stove and Range Company. Published the words 'There is no law, aye, not even a court decision compelling union men or their friends of labor to buy a Buck stove or range,' as a statement of fact. It was not intended either directly or indirectly, to aid or abet a boycott of the Buck Stove and Range Company, or to interfere with its business. It was without the slightest intention to affect its business. The words, 'No, not even a Loewe hat,' were put in without any intention to affect the business of Mr. Loewe."

These statements, amazingly incredible as they stand, become still more so when read in the light of other statements made by the witness in his testimony, of which, too voluminous to be set forth fully, the following are examples:

At page 454, he testifies that he published the injunction in the *Federationist*, which act his editorial in the April, 1909, *Federationist*, quoted in the court's opinion (Record, pp. 111-112), reproduced in Respondent's Brief at page 19, declares of itself tended to keep alive the boycott. He published it so that all the members of the labor unions and their friends "might obey it in so far as its terms were not beyond the power of the court to issue." At pages 454-455, he testifies that he knew the injunction restrained him from distributing any printed or written matter which contained or in any manner referred to the Buck Stove and Range

Company's name, business or product as having been in the "We don't patronize" or "Unfair" lists, but "these were the very things for which the defendants were contending"—the right of free press and free speech, and the contention that no restraining order should in advance prohibit publication. Witness took that position and acted upon it. He obeyed the injunction. When a court issuing an injunction denies the constitutionally guaranteed right, the constitutional right must be exercised by any self-respecting citizen. The very contention which they have been making all through, and are making now, is that exercising the constitutional right does obey the injunction—"that an injunction which is void does not necessarily require obedience to part of its terms."

At pages 456-457, he testifies that he knew his editorial "discussed the injunction; the denial of free speech and free press, and these two parts of the injunction were in violation of the Constitution of the United States, and he proposed to continue to discuss the subject, either upon the platform or through the columns of the *Federationist*, as a principle, but not for the purpose of carrying on a boycott, or of being in contempt of court." To the question whether he proposed to disobey the injunction without being in contempt of court he answered that "the court had issued an injunction, parts of which were void by reason of interference with constitutional guarantee of citizenship. * * *

When a citizen is fully convinced an order of court has transcended its power—issuing an order void and unconstitutional—and that conviction of the citizen is fortified by advice of counsel, that is the position to take. * * *

He could not so effectively make such contention in regard to the constitutionality and validity of these injunction decrees, without violating them until some other court had acted upon them." At page 459, he testifies that he knew it was

in excess of the power of the court to prohibit himself and his co-defendants from making any reference to the fact that the Buck Stove and Range Company had been on the "We don't patronize" list, or had had any controversy with labor organizations, and that he knew, as a matter of fact, that the court had undertaken to enjoin him in that respect. He had united with Mitchell in issuing an editorial in the February, 1909, *Federationist*, declaring that Mitchell's course in entertaining the resolution to fine a man for buying a Buck stove, putting it to the body over which he presided, taking the vote, and declaring it adopted, was the only course that a self-respecting man could have availed himself of, these acts of Mr. Mitchell having been subsequent to the issuance of the original injunction. Asked, at page 468, whether he did the thing he knew the injunction prohibited, he answered, "It was the exercise of free speech, and the order, in so far as it forbade the exercise of free speech, was in excess of its powers." He, himself, gave notice to 25,000 persons that organized labor had asked its friends to withhold their patronage from the Buck Stove and Range Company, but did not think this a violation of the injunction, because the injunction was void in so far as it forbade the exercise of freedom of speech and freedom of press. In saying witness obeyed it, he means that he obeyed all except the void parts, all the parts which he held to be void." At page 472, "If the injunction forbade the exercise of the right of free press, he proposed to exercise that right, and take the consequences, whatever they may be. * * * Was making reference to the injunction of Justice Gould in the Buck's Stove case." He contended that they had the right to exercise the right of free press and free speech, and that no restraining order of the court could in advance restrain the expression of free press and free speech. Stating in the Urgent Appeal that there

was a conflict between the Federation and the Stove Company, and that organized labor be asked, together with its members and friends, not to buy its product, "was not deemed in violation of the terms of the injunction, and had no such purpose" (p. 475).

In the February, 1908, *Federationist*, he wrote (Record, p. 475): "The injunction orders that the facts in controversy between the Buck's Stove and Range Company and organized labor must not be referred to, either by printed or written word, or orally," but that, "with all due respect to the court, it is impossible for us to see how we can comply with the terms of this injunction. We would not be performing our duty to labor and to the public without discussion of this injunction. * * * We would be recreant to our duty if we did not do all in our power to point out to the people the serious invasion of their liberties which has taken place." He announced in the April, 1908, and again in the July, 1908, *Federationist*, that the injunction had been made permanent, that it would be appealed, and that "it did not compel anybody to buy the Stove Company's products." This was repeated in the July number, although already published in the April number, because it "required repetition and repetition to make the people understand the great wrongs inflicted upon them" (Record, p. 478)—a view which, no doubt, accounts for the fact that no number of the *Federationist* was allowed to issue without repeated references to the controversy.

The foregoing are a comparatively small part of the statements of similar character which abound in the testimony of Mr. Gompers in this case. The court below, of course, had the right to read them, as all intelligent men must do, in the light of his April, 1909, editorial, entitled "*Self-inflicted Boycott*": "When the temporary injunction was issued prohibiting the exercise of the right of free press

and free speech, and the daily papers rang with statements of the case in relation to the Bucks Stove and Range Company, then indeed did many people who had not been concerned with the attitude of labor in any other boycott, conclude that they would not purchase such goods. Then there was the making **permanent of the temporary injunction**, and the appeals for funds by the American Federation of Labor with which to carry the case to higher courts. There was the President's report to the conventions, the actions of two conventions—all despite the clause of the original injunction prohibiting the exercise of free press and free speech in relation to the Buck's Stove and Range Company. It was these things which kept the boycott fresh in the minds of the workers and their friends, and aroused the most intense interest. Every hostile move of the Van Cleave Buck's Stove and Range Company, every action leading to greater publicity of the case, increased the boycott. It must be remembered, too, that the injunction did not, and does not, apply beyond the District of Columbia. * * * By a perfectly understandable mental process, all these happenings kept before the public the fact that labor had a formal boycott against the Bucks Stove and Range Company; hence we repeat the Bucks Stove and Range Company has been the most potent agent in fastening upon itself a boycott—primarily, secondarily and possibly everlasting—because it has assumed that the courts of the land would bolster up its every attack upon the workers, regardless of how far it invaded the inherent and constitutionally guaranteed rights of the people."

The foregoing editorial, published more than a year before the discontinuance of the boycott, was of itself an unmistakable call to a continuance of it, "primarily, secondarily and possibly everlasting," against a citizen who had had the temerity to look to the courts of the United

States for such protection as they should decide he was legally entitled to be given at their hands.

A means of enabling himself to testify to these otherwise hopelessly inconsistent statements appears to have been found by the respondent by establishing in his own mind a conception of a boycott which would enable him, in his own consciousness, to differentiate between maintaining a publicity with respect to the controversy and the injunctions which would destroy the business of the Buck Stove and Range Company, and aiding or abetting the boycott. At page 393 of the Record he claims that the constitution of the American Federation of Labor does not provide for the prosecution of boycotts; at page 455 he testifies that he "obeyed the injunction in every particular, in so far as it was for the purpose of carrying on a boycott or aiding or abetting it"; at page 462 he testifies that "the boycott ended, so far as the A. F. of L. or its officers are concerned, on December 23, 1907," and, at page 457, that "the A. F. of L. maintained boycotts in earlier years, but not in 1907." At page 455, however, he defines a boycott as "*an agreement of two or more persons to refrain from bestowing their patronage upon any individual*"—it may well be there were no "agreements," in some senses of that word, formally entered into while the injunctions were in force, and that the various acts of the respondent Gompers were not intended by him to aid or abet any formal "agreements" to that effect. The metaphysical and fallacious character of this distinction is finally admitted, by him at pages 467-468 of the Record, where, after claiming that publishing the names of firms or manufacturers in the "We don't patronize" list is different from a boycott, he finally admits that "there may be very little difference between this and a boycott in witness's construction of this term—substantially the same thing in effect. On the construction

Mr. Darlington gives it, from which witness will not differ, when witness stated in the Urgent Appeal circular that organized labor had 'made this fact known,' he referred to the fact that the organization had practically boycotted the Buck's Stove and Range Company."

Further discussion of the guilt of this respondent, and that of the respondent Morrison, who circulated his various manifestos, depending for their claim that this was not a disobedience of the order and continuance of the boycott upon the unsubstantial distinction thus attempted to be set up, would seem to be unnecessary, even if the fact of guilt were one for determination in this appellate tribunal. That there was legally sufficient testimony tending to show their guilt and that of Mr. Mitchell, and to establish it if this were a question here, is abundantly apparent from the Record. Only a single further quotation will be presented, this time from a joint editorial by the three in the February, 1909, *Federationist*, entitled "The Decision Reviewed, by Samuel Gompers, John Mitchell and Frank Morrison," immediately following the imposition of sentence in the former proceedings, and which will be found at pages 431, 443 of the Record:

"Some carping critics have said, 'Why not obey the terms of the injunction until the courts of last resort shall have rendered their decision?' We answer that such a course was absolutely impossible. It would have perverted and suppressed the lawful proceedings of a convention of the American Federation of Labor, a lawful gathering and body. It would have conceded the surrender of the principles of freedom of speech and of the press. It would have deprived the men of labor of the right of calling the wrong to the attention of people, aye, it would have prevented the men of labor even from making an appeal to Congress or from giving the grounds or furnishing the arguments

upon which they base their claims for congressional relief. It must be remembered that the defendants, their friends, sympathizers, agents and attorneys were enjoined from mentioning directly or indirectly, in printing, in writing, or by word of mouth, the original grievance, the original contention, the injunction, or anything in connection therewith."

IX.

The final contention on behalf of the appellants, represented by their twelfth assignment of error in this court, is that, by their appearance and answers, they purged themselves of any possible charge of contempt, and that the court below accordingly erred holding them guilty thereof.

It is to be remarked, in the first place, that this attempted defense is put forward for the first time in this court, no purgation having been claimed in the trial court, nor covered by any of the assignments of error in the Court of Appeals (Record, pp. 132, 167-168, 206-207). The opposing brief suggests no ground for the exclusion of this case from the application of the rule that this court will not notice objections not made below; nor is any ground for such an exclusion apparent. The objection, we submit, is fatal.

In the second place, the claim of purgation by the answers is remarkable, in the light of the answers themselves. They consist (Record, pp. 39, 160, 197) of four brief paragraphs, amounting in effect to four pleas, namely: First, a plea of not guilty; secondly, that certain of the matters charged did not occur within three years before the bringing of the action; thirdly, that certain of the matters charged were barred, because of laches on the part of the court or of the judges, and fourthly, that the delay in the presentation of the charges had been so unreasonable that the respondents should not be called upon to answer them. This was the only purgation offered, notwithstanding the

fact that the Report of the Committee, in the case of each respondent, concluded with the suggestion that in the commission of the acts charged each respondent had asserted, and perhaps had then believed, that the injunctions were not binding upon him because of what he claimed to be his constitutional right of free speech and free press; and that, since this, the court of last resort, had now determined those claims to be unfounded, the respondents might be prepared to make such due acknowledgment, apology and assurance of future submission to the court as might sufficiently answer the necessary purposes of vindicating its authority, and that of the law. This overture Mr. Gompers declared in his cross-examination was considered by him as an insult; that he had violated no law, that he was not called upon to say what he should do in the future, that he had simply to say that he should endeavor to contend, so long as life remained in him, for the right of free speech and free press "untrampled by an injunction" (Record, pp. 490-491).

With respect to respondent Mitchell, the trial court (Record, pp. 549-552, 571) endeavored with much consideration and patience to secure, if possible, a concession that, since this court had determined adversely to his contentions the claim that the injunctions were not binding upon him, he would not in future disobey them, to which his final response was his letter, at p. 745 of the record, stating in effect that he was "not willing by any device or subterfuge to attempt to deceive the court," or to "secure an acquittal by any other means than those of the evidence and the truthfulness of his testimony"; in other words, that he had no apology, acknowledgment or concession to make, and nothing in the way of purgation to offer.

In view of the principle of law that, in order to effect purgation, it is always necessary that the accused should fully deny or explain the alleged misconduct, the claim in

this cause of purgation, based upon such answers and accompanied by such an attitude at the trial, is, it is submitted, in form and substance the most extraordinary on record. Its belated appearance, first occurring in the assignment of errors filed in the Court of Appeals after the final decision by both the trial court and by that tribunal, has already been adverted to. Among the multitude of objections in the trial court, raised by motions to set aside the returns of service, to set aside the reports of the committee, to substitute other prosecutors, to dismiss the proceedings, to order bills of particulars, pleas of former jeopardy, not guilty, laches, limitations, unreasonable delay on the part of the court, etc., and a constant succession of objections throughout the trial of every other form and character, the record shows that the accused never once suggested that, by the sure and easy method of interposing sworn answers of the requisite character, they had purged themselves, and had relieved, or at any later stage of the case had been willing to relieve the court of the necessity to proceed further in the matter. On the contrary, effort both by the committee and by the court to induce concessions, though only to the extent of expressing a willingness to accept the decision of this court as conclusive upon the question of their duty to obey injunctions of the courts until relieved of them by due process of law, was truculently rejected, and no alternative permitted but to proceed to judgment, unless the court was willing to throw down its hands, admit its defeat and abandon any attempt at the vindication of its authority. So, in going to the Court of Appeals, and in searching the record for errors to be assigned there, this claim of an accomplished, or even of an attempted purgation, escaped respondents entirely, their assignment of errors in that court containing no suggestion, however remote, of such a claim.

In view of this condition of the facts with respect to the

point now in consideration, it must be unnecessary to discuss at any length the law applicable to that question. In *U. S. vs. Ship*, 203 U. S., 563, 574, and in *Pierce vs. U. S.* 37 App. D. C., 582, reported here in 223 U. S., 732-733, it is established that the ancient common law doctrine of purgation by oath no longer prevails, even in cases of criminal contempt committed against courts of law as distinguished from courts of equity. In the latter, from the earliest times, the oath of the accused was never conclusive in his favor, but could be contradicted by other evidence, and this was the rule, also, in courts of law in all cases where the contempt consisted in disobedience to an order of the court, since if the law were otherwise, no court, either of law or equity, could enforce its orders or proceed with its business. Blackstone (4 Comm., 287-288) explicitly states that the rule did not apply to contempt by violation of injunctions in equity, and so are all the authorities.

In *Cartwright's Case*, 114 Mass., 239, which was one of alleged contempt in disobedience to an order of court, Chief Justice Gray declared that the sworn statement of the respondent that he had no intention to do wrong was contradicted by his other statements and by his actions, and that his sworn statement was not conclusive.

In the case of the *State of Texas vs. White and Chiles*, Original in Equity in this court, Vol. 1, page 1 of Bound Transcripts of Record in the Clerk's Office, reported, also, as *In re Chiles*, 22 Wall., 157, which was a case of criminal contempt for violation of an injunction granted by this court, the record shows that, after the accused had filed his sworn return to the rule to show cause why he should not be adjudged guilty and punished for the contempt, in which answer he disclaimed emphatically any intention to commit any contempt of the court or to violate its injunction, this court ordered the complainant the State of Texas

to file written interrogatories, and *ordered the accused to answer them* under oath, and, upon the evidence thus extracted from him, found him guilty of a contempt of this court, and sentenced him to pay a fine of \$250 to the United States and to stand committed until the fine was paid.

The respondents devote many pages of their brief, under the present assignment of error, to an analysis, review, and discussion of the testimony in the case in an effort to show that the lower courts were wrong in the finding deduced by them from the testimony that the respondents violated the injunctions, intentionally and wilfully. This court, however, has repeatedly held that, in cases of criminal contempt, it and all other appellate courts are restricted to review of errors of law, only, which must accordingly be presented for their consideration by writs of error or certiorari and not by appeal. Even if the case were otherwise, and the controversy could be brought here by appeal, the two lower courts having concurred in their conclusion as to the facts of the case, under the evidence, this court, except under cogent conditions, would not disturb their findings. In addition, as is shown elsewhere in this brief, not only was there evidence upon which to base the conclusion of the trial court and of the Court of Appeals that the respondents intentionally violated the injunctions, but the evidence was of such a character as, from the nature of the acts committed, the declarations which accompanied them and the admissions made by each of the respondents in connection with them at the hearing, to establish, beyond a reasonable doubt or question, the truth of the charges preferred in the Reports of the Committee, and to overcome the purely technical defense offered in either the answers of the respondents or in the testimony on their behalf.

X.

If the application of the Supreme Court of the District of Columbia for certiorari be allowed, there remains to be considered whether the Court of Appeals possessed the jurisdiction assumed by it to deny to the District Supreme Court the power to determine the punishment of contempts against it, and to restrict that Court, in a matter of this sort, to the mere ministerial duty of entering up judgment for the punishment which the Court of Appeals has assumed the right to determine and impose for contempt against the lower court.

It will not be here argued that the judgment of the lower court was not a final judgment, and, as such, not reviewable by the Court of Appeals under the authority conferred upon it by its organic act to review any final order, judgment or decree of the Supreme Court of the District and to "affirm, reverse or modify the same as it shall be just." Such review seems to have been held authorized by this court in *Bessette vs. Conkey Co.*, 194 U. S., 336-7; but in that case, at p. 338, this court declares that, on such a review, which must be by writ of error, "only matters of law are considered. The decision of the trial tribunal, court or jury, deciding the facts, is conclusive as to them." And, at pp. 336-7, this court, referring to contempts, adds: "They are triable only by the court against whose authority the contempts are charged. No jury passes upon the facts; no other court inquires into the charge." The proceedings are reviewable in the appellate tribunal, as in criminal cases, for the purpose, only, of ascertaining whether there has been error of law; but such power of review has never before been held in either contempt or criminal cases to extend to interference with the sentences of punishment where there was no error in the trial and adjudication of guilt.

Ballew vs. U. S., 160 U. S., 187, the case mainly relied upon by the Court of Appeals for the jurisdiction asserted by it in this case (Rec., p. 775), does not sustain that proposition. On the contrary, after pointing out that this court and the Circuit Courts have possessed authority ever since the Judiciary Act of 1789 to proceed upon the reversal of a judgment or decree to render such judgment or to pass such decree as the lower court should have rendered or passed, and, finding that the lower court had erred in respect to one of the two counts of the indictment under which the plaintiff in error had been convicted, it remanded the cause to the court below to fix and impose the punishment under the count upon which the plaintiff in error was rightfully convicted. If the contention of the Court of Appeals were well founded, it would have been the function of this court to ascertain and fix that punishment, and to remand the cause to the lower court for the performance of the mere ministerial duty of recording the judgment of this court as to the punishment properly to be imposed. The opinion points out, further, that, by the Act of March 3, 1879, the Circuit Courts may upon affirmance of the judgment of the District Courts in certain classes of criminal cases proceed to pronounce final judgment and to award execution; but, if the judgment of the lower court is reversed, the Circuit Court must either proceed with the trial of the cause *de novo* or remand the same to the District Court for further proceedings. In the case at bar, it will be noted, the Court of Appeals not only assumed the jurisdiction to reverse the sentences imposed by the District Supreme Court, but to deny that court any voice or power in determining the punishment properly to be inflicted for contempt of its authority.

Since, as pointed out by this court in *Ballew vs. U. S.*, the Circuit Courts have from the time of their creation pos-

sessed the power to affirm, reverse or modify, it must be assumed that, if this power included the authority to review the quantum of punishment inflicted in criminal cases, and to increase or lessen that punishment—since the power to modify includes the power to increase as well as to diminish—precedents would not be wanting in the reports for its exercise. The “silent practice” of all courts, for the century and a quarter which has intervened since their creation, is cogent authority upon the subject. *Gordon vs. Ogden*, 3 Pet., 33, 35; *Illinois Central R. R. Co. vs. Turill* 110, U. S., 301-304.

Nor is it necessary to proceed beyond our own jurisdiction, or beyond the authority of the Court of Appeals itself, to find not only silent practice, but affirmative authority against the existence of the jurisdiction in question. In *Raymond vs. U. S.*, 26 App. D. C., 250, 257, the appellant, upon conviction of the offense of a mere libel upon an individual, was sentenced to five years in the penitentiary and appealed to the Court of Appeals upon the ground, among others, that the sentence was excessive. The court said: “The power to affix the penalty upon conviction is vested exclusively in the trial court, and the appellate court is vested with no jurisdiction in respect to the exercise of that power, provided it does not exceed the statutory limit.”

The opinion of the Court of Appeals in this case, it is true, endeavors to distinguish between sentences in ordinary criminal cases, in which the statutes fix the minimum and maximum punishment, and contempt cases where a minimum and maximum punishment are not prescribed; but the distinction, we submit, is incapable of being maintained. The range between the maximum and minimum penalty in the case of crimes is given, to admit of the exercise of discretion by the trial court, because of the varying circumstances and conditions which may attend the offense; but

the sentence in all such cases is just as final and just as open to the charge of being excessive, under the circumstances of the particular case, as if the statutory limitations did not exist. What would be an entirely moderate sentence in the case of an offense committed under circumstances of aggravation and atrocity, might easily be entirely excessive under other and different circumstances. It is *any* final order, judgment or decree which the Act creating the Court of Appeals confers upon it jurisdiction to affirm, reverse or modify; and there is no theory upon which jurisdiction to review and modify a five year sentence for libel can be held not to exist under that act, and yet its existence maintained in respect to sentences for six, nine and twelve months in the case of contempts so aggravated in character as, under the findings of the Court of Appeals in this case, to fall little if at all short of high treason. It consisted (Rec., pp. 774-5), of "a deep-laid conspiracy to trample under foot the law of the land and set in defiance the authority of the Government. The prominence of the respondents only adds to the gravity of the offense. Their wide influence and power, thus exerted, reaches not only to every subordinate branch of the great organization of which they are the leaders, but to its friends and sympathizers. If the law is to be supreme; if the authority of the Government is to be maintained, it is not for the courts to treat lightly a conspiracy for their destruction, either because of the prominence and influence of the conspirators, or in deference to the inspiring clamor of their misguided followers." And again (Rec. pp. 773-4), after referring to the invitation to the respondents contained in the Committee's Reports to purge the contempt by due acknowledgment and assurance of future submission to the court in view of the fact that their claims, which led to the contempt, had been finally determined by this court to be unfounded, the Court

of Appeals continues: "It appears that the court stood ready, up to the time of pronouncing judgment, to accept a compliance with the terms of the suggestion as to purging respondents of contempt and a justification for their discharge. They, however, refused to adopt the suggestion offered. This is important in measuring the intent and temper of respondents. In the former proceedings, they attempted to justify upon the ground that the order of injunction was an abridgment of free speech and free press. Three courts, culminating with the Supreme Court of the United States, had held against them, and the only question submitted by the suggestion was whether they were now ready to submit to the law of the land, as interpreted by its highest tribunal. Standing convicted of a most persistent and flagrant violation of an order of a court of the United States, after every excuse for their action had been brushed away, they not only refused submission to the courts, but by their action contemptuously defied all lawful and constitutional authority—yes, Government itself."

Did sentences of six, nine and twelve months' imprisonment under these circumstances, in the case of respondents who were still persisting, contemptuously, in their defiance of the court, present a case of legal error, sufficient to confer jurisdiction upon the Court of Appeals to interfere with the inherent power possessed by the lower court itself to punish the contempt committed against it, and to substitute, instead, the authority of the Court of Appeals to determine and impose the punishment for that contempt?

Nor does the denial of the jurisdiction asserted in this case depend upon *Raymond vs. U. S.* or upon decisions of the Court of Appeals in criminal cases. In the former contempt proceedings against these same respondents, for the same identical acts, for which the same sentences had been imposed by the trial court, and upon the same assignment

of error that the punishment was cruel and unusual, the Court of Appeals said (*Gompers vs. U. S.*, 33 App. D. C., 575, 577): "The order of the court below, finding the defendants guilty of the charges herein considered, is sufficient to support the penalty imposed by the court. Hence, further consideration of this branch of the case is unnecessary. * * * Neither are we, as a court of review, permitted to modify or extenuate the extreme penalty imposed. These matters, as we have suggested, may be presented to the officer vested with authority to commute or pardon.

Of this decision, the Court of Appeals in the present case says (Rec., p. 777): "In our former opinion (33 App. D. C., 577), it was intimated that this court is without power to modify a judgment on appeal. This point was not there urged or regarded as essential to the disposition of the appeal. Hence the broad statement must be accepted as an expression of opinion relative to our appellate jurisdiction over judgments in general, and without application to an exceptional case like the present, where the erroneous judgment was rendered in the exercise of judicial discretion, and where, from the record, without assuming the prerogatives of the trial court, we now direct a modification of the judgment. With the utmost deference to the court, it is difficult to see why the point in question was not as essential in the former case as here. The judgment of the trial court in that case was affirmed, which, in so far as that court was concerned, meant that the respondents must suffer the six, nine and twelve months' sentences which had been imposed.

The same question was again presented in *Pierce vs. U. S.*, 37 App. D. C., 582, 587, in which case the plaintiff in error, upon the charge of attempting to tamper with a member of the grand jury, had been sentenced to three

months' imprisonment in the common jail, and appealed to the Court of Appeals for a review of the severity of that sentence, as well as upon other grounds. The Court said, the italics being ours: "The case against defendant is fully sustained by the evidence; and the penalty imposed, which we deem neither extreme nor unusual, *we are without jurisdiction to modify if so disposed.* The judgment is affirmed with costs, and it is so ordered." A petition to this court for certiorari, to review this conclusion of the Court of Appeals, was denied in 223 U. S., 733. While this court does not review the exercise of a discretion possessed by the lower court, it will correct a mistaken view of that court that it does not possess the discretion in question, and, if it really exists, will require its exercise. *Met. R. R. Co. vs. Moore*, 121 U. S., 558, 575.

The assignment of error in the court below under which the ruling now being considered was made was (Rec., p. 207), not that the punishment was excessive and therefore reviewable under the jurisdiction given by the act creating the Court of Appeals to affirm, reverse or modify, but that it was "cruel and unusual within the meaning and intent of the Constitution of the United States." That imprisonment for contempt of court was a cruel and unusual punishment is not, of course, susceptible of serious contention. With respect to the periods of punishment imposed, the court in *United States vs. Sweeney*, 95 Fed., 452, 457, imposed sentences of five, six, eight and ten months, respectively, for conduct far less deliberate and intentionally defiant than that of any one of the respondents in the present case. In *in re Frost*, 121 Fed., 213, the United States Circuit Court of Appeals imposed a sentence of imprisonment for twelve months upon Frost. In the case of *in re Savin*, 131 U. S., 267, a sentence of one year's imprison-

ment for contempt consisting in an attempt to tamper with a juror was upheld by this court, and this notwithstanding the fact that the accused denied the commission of the offense. It is well settled, moreover, that it is not extent of the punishment imposed, but rather its nature, which determines whether it is cruel and unusual within the meaning of the constitutional prohibition.

As shown by the record, the Court of Appeals sustained in every particular the judgment of the Supreme Court of the District that the respondents were guilty of contempt of that court in wilfully violating the terms of its injunctions. "The only error in the record relates to the excessive punishment imposed" (Rec., p. 779). By the 17th Section of the Judiciary Act of September 24, 1789, carried forward as Section 725 of the Revised Statutes and re-enacted as Section 268 of the Judicial Code of March 3, 1911, "The said courts," *i. e.*, all courts of the United States, "shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority." It will be noted that it is "the said courts," in the plural, which possess this power, while punishment to be imposed is "at the discretion of *the court*," in the singular, making it evident that it is the court against which the contempt is committed to which this discretion is confided. The contention of the Court of Appeals is that in this matter, which the statute confides to the discretion of the court offended against, the mere power to affirm, reverse or modify, possessed by all Federal appellate tribunals, confers jurisdiction to take from the court against which the contempt is committed the exercise of the discretion thus conferred upon it by the statute and to substitute for it the discretion of any superior appellate tribunal. If so, then as above noted, the discre-

tionary power of the trial court in all criminal cases to fix the punishment, upon conviction of any offense, must in like manner and equally be subject to the power to affirm, reverse and modify. The far-reaching consequence of such a construction is apparent.

"To submit the question of disobedience to another tribunal, be it a jury or another court, would be to deprive the proceeding of half its efficiency." *In re Debs*, 158 U. S., 564, 595, cited in *Bessette vs. Conkey Co.*, 194 U. S., 337.

"The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the court, and consequently to the due administration of justice." *Ex parte Robinson*, 19 Wall., 510. And see *in re Debs*, 158 U. S., p. 595, and citations.

In *ex parte Bradley*, 7 Wall., 372, an attempt by the Supreme Court of the District of Columbia, in General Term, to punish an attorney for a contempt committed against the criminal branch of the court was declared to "present the anomalous proceeding of one court taking cognizance of an alleged contempt committed before and against another court, which possessed ample powers, itself, to take care of its own dignity and punish the offender."

"The power to punish for contempt is a discretionary power, and must be freely exercised; and, when so exercised in a case within the discretion of the court, no review can be had." *In re Consolidated Rendering Co.*, 80 Vt., 63.

"We think the amount of the fine and duration of imprisonment are within the sole discretion of the superior court, and no court of review has any control over the matter." *Rogers Mfg. Co. vs. Rogers*, 38 Conn., 121.

"The exercise of this power has a two-fold aspect, namely, first, a proper punishment of the guilty party for his dis-

respect to the court or of its order, and, secondly, to compel his performance of some act or duty required of and by the court which he refuses to perform. In the former case, the court must judge for itself the nature and extent of the punishment, with respect to the gravity of the offense." *In re Chiles*, 22 Wall., 168.

It is respectfully submitted that the only error committed by the Court of Appeals in these cases was in its assumption of the jurisdiction to substitute its discretion for that of the trial court, in fixing the appropriate punishment for the contempts of which the respondents were guilty; that in this respect its action should be reversed, and in all other respects affirmed.

Respectfully submitted,

J. J. DARLINGTON,
DANIEL DAVENPORT,
JAMES M. BECK,

Committee.

Office Supreme Court, U. S.
FILED.

MAY 26 1913

JAMES W. MCKENNEY,
CLERK.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1912.

No. ~~1145~~ 574

Ex Parte SAMUEL GOMPERS, JOHN MITCHELL AND FRANK
MORRISON, *Petitioners.*

Petition of the Supreme Court of the District of Columbia
for a Writ of Certiorari to the Court of Appeals of the
District of Columbia for Revision of the Action of the
Court of Appeals in the Case of *In re Samuel Gompers,*
In re John Mitchell, In re Frank Morrison, Being
Cause No. 2477 in the Court of Appeals.

J. J. DARLINGTON,
DANIEL DAVENPORT,
CLARENCE R. WILSON,
JAMES M. BECK,
Attorneys.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1912.

No. —

Ex Parte SAMUEL GOMPERS, JOHN MITCHELL AND FRANK
MORRISON, *Petitioners.*

Petition of the Supreme Court of the District of Columbia
for a Writ of Certiorari to the Court of Appeals of the
District of Columbia for Revision of the Action of the
Court of Appeals in the Case of *In re Samuel Gompers,*
In re John Mitchell, In re Frank Morrison, Being
Cause No. 2477 in the Court of Appeals.

*To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The Supreme Court of the District of Columbia, by
Harry M. Clabaugh, Chief Justice, and Job Barnard,
Thomas H. Anderson, Ashley M. Gould, Daniel Thew
Wright, and Wendell P. Stafford, Associate Justices, re-
spectfully represents:

That in accordance with the opinion and mandate of the
Court in the case of *Gompers vs. Buck's Stove and Range*
Company, No. 372, October Term, 1910, reported in 231
United States Reports, 418, remanding said cause to this
Court with direction to dismiss the contempt proceedings

therein instituted by the Buck's Stove and Range Company, but without prejudice to the power and right of this Court to punish by a proper proceeding, contempt, if any, committed against it by the said respondents, this, the Supreme Court of the District of Columbia, caused proceedings to be prosecuted against Samuel Gompers, John Mitchell and Frank Morrison, respectively, including a rule by it issued requiring each of the said respondents to show cause whether they had not been guilty of contempt of this Court in disobeying the injunctions by it issued in the case of Buck's Stove and Range Company vs. American Federation of Labor and others, and whether they should not be punished accordingly; that, after an answer to the rule by each of the said respondents and after the due taking of testimony under the issues raised in any by the said proceedings, each of the said respondents was by this Court found guilty of contempt, in an open, avowed and defiant disobedience of its said decrees of injunctions, and that, after being afforded due opportunity to purge the said contempt by signifying their willingness hereafter to obey the orders and decrees of the Court unless and until the same should be reversed by competent authority, in accordance with the law as declared by the Supreme Court of the United States in the said former proceeding, each of the said respondents declined to make any apology or acknowledgment for his conduct in the past, or to give any assurance that the authority of the Court would be respected or its orders and decrees obeyed in the future; that thereupon this, the Supreme Court of the District of Columbia, imposed sentences of six, nine and twelve months' imprisonment upon the respondents, respectively, for their said contempt, from which they appealed to the Court of Appeals of the District of Columbia; that the last named Court sustained in every particular the action of this Court

in the conviction of the respondents, and found that, "standing convicted of a most persistent and flagrant violation of an order of a court of the United States, after every excuse for their action had been brushed away, they not only refused submission to the courts, but, by their action, contemptuously defied all lawful and constitutional authority—yea, Government itself," and had confronted the court "with a deep-laid conspiracy to trample under foot the law of the land, and set in defiance the authority of the Government;" but that, notwithstanding its said decided findings, the punishment of the respondents as fixed by this Court, in view of the flagrant character of their guilt, was unusual and excessive, that the Court of Appeals possessed the power to review any final order, judgment or decree of the Supreme Court of the District of Columbia, and to affirm, reverse or modify the same as should be just, and that, in the exercise of the power thus assumed, a sentence of one month imprisonment for the defendant Gompers and a fine of \$500 each of the defendants John Mitchell and Frank Morrison should be substituted for the sentences imposed by this Court, in the vindication and protection of its authority and powers. The jurisdiction thus assumed by the Court of Appeals is not only in departure from its own repeated adjudications upon the question involved (*Gompers vs. Buck's Stove and Range Company*, 33 App. D. C., 516, 577; *Pierce vs. United States*, 37 App. D. C., 582, 587; *Raymond vs. United States*, 26 App. D. C., 250, 257), but is one of great general interest and of far reaching importance and effect; since, if correct, it not only makes sentence imposed by this Court in every case of either a criminal or of a *quasi* criminal nature appealable to the Court of Appeals, but takes from this Court, and from all other courts of similar character, the summary power to enforce their orders and decrees and to vindicate

assaults upon them which have hitherto been held inherent in and necessary to the existence of all courts, and postpones, if sustained, the prompt and necessary assertion by this and similar courts of their inherent powers, and the enforcement of their orders, judgments and decrees, until after an appellate tribunal shall have passed upon, concurred in, revised or modified the orders and judgments in cases of contempt which the courts whose authority has been offended against have imposed.

In view of the great public importance of the questions involved, this Court concurs in the petition of the said respondents, which they are advised is to be by them presented to the Supreme Court of the United States, that a writ of certiorari may be issued requiring the Court of Appeals of the District of Columbia to certify to the Supreme Court of the United States, for consideration and review by it of the questions presented to and determined by the said Court of Appeals in the contempt proceedings against the said Samuel Gompers, John Mitchell and Frank Morrison, the proceedings in said cause No. 2477 in the Court of Appeals of the District of Columbia, to the end that said questions may be determined in accordance with law and as their great importance demands.

THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
By

HARRY M. CLABAUGH,
Chief Justice.

JOB BARNARD,
THOS. H. ANDERSON,
ASHLEY M. GOULD,
D. T. WRIGHT,
WENDELL P. STAFFORD.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1912.

No.

Ex Parte SAMUEL GOMPERS, JOHN MITCHELL AND FRANK
MORRISON, *Petitioners*.

Now comes the Supreme Court of the District of Columbia, by Harry M. Clabaugh, Chief Justice, and Job Barnard, Thomas H. Anderson, Ashley M. Gould, Daniel Thew Wright, and Wendell P. Stafford, Associate Justices, and moves this Honorable Court that it shall, by certiorari or other proper process, direct the Honorable Justices of the Court of Appeals of the District of Columbia, to require the said Court to certify to this Court for its review and determination, a certain cause in said Court of Appeals lately depending, wherein the said Samuel Gompers, John Mitchell and Frank Morrison were appellants from judgments rendered against them by this petitioner, the Supreme Court of the District of Columbia, in proceedings by it prosecuted against them for contempt in disobeying its injunctions and defying its authority, being cause No. 2477 in the Court of Appeals of the District of Columbia, and to that end now tender herewith their petition, adopting as a

part thereof a certified copy of the record of said cause in the said Court of Appeals, accompanying a petition for certiorari by said respondents, in this Honorable Court.

HARRY M. CLABAUGH,

Chief Justice.

JOB BARNARD,

THOS. H. ANDERSON,

ASHLEY M. GOULD,

D. T. WRIGHT,

WENDELL P. STAFFORD

J. J. DARLINGTON,

DANIEL DAVENPORT,

CLARENCE R. WILSON,

JAMES M. BECK,

Attorneys.

**IN THE
SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1912.

No.

SAMUEL GOMPERS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

**PETITION OF SAMUEL GOMPERS FOR WRIT OF
ERROR.**

JACKSON H. RALSTON,
FRED'K L. SIDDONS,
WM. E. RICHARDSON,
Attorneys for Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No.

SAMUEL GOMPERS, PLAINTIFF IN ERROR.

vs.

THE UNITED STATES.

PETITION OF SAMUEL GOMPERS FOR WRIT OF
ERROR.

*To the Honorable the Chief Justice and the Associate Justices
of the Supreme Court of the United States:*

The petition of Samuel Gompers, one of the defendants in the above-entitled cause, respectfully shows that on the 5th day of May, 1913, the Court of Appeals of the District of Columbia entered a final judgment against your petitioner in a certain cause originally entitled, in equity, in the Supreme Court of the District of Columbia, "*In re Samuel Gompers*," wherein your petitioner was a defendant and respondent, being charged with criminal contempt of the Supreme Court of the District of Columbia.

In the original complaint in said cause Joseph J. Darlington, Daniel Davenport, and James M. Beck were appointed

a committee authorized and empowered to inquire whether there was reasonable cause to believe that this petitioner, among others, had been guilty of contempt of an order of injunction issued by the Supreme Court of the District of Columbia on or about December 18, 1907, in a cause numbered equity 27305, entitled "The Buck's Stove & Range Company, plaintiff, *vs.* The American Federation of Labor, Samuel Gompers *et al.*, defendants," and if yea they were empowered and directed forthwith to file, present, and prosecute against the respondents charges of contempt of court to the end that the authority of the court be established, vindicated and sustained; that the said committee reported that the respondents were guilty of contempt of court and had subjected themselves to due punishment therefor, the items of said report being more fully shown by the record herein; that after preliminary proceedings, more at length set forth in said record, this respondent was found guilty and sentenced by the Supreme Court of the District of Columbia, sitting in equity, to be confined in the prison of the Washington Asylum and Jail for and during the period of six months. From the said findings and decree this respondent appealed to the Court of Appeals of the District of Columbia and upon the hearing of such appeal a majority of the Court of Appeals reversed the sentence of the court below and directed said court to enter a new sentence directing this respondent to be fined the sum of \$500.00.

That in its said judgment the majority of the said Court of Appeals erred in the respects shown by the assignments of error filed herewith, and particularly among other things, in that—

1. It did not pass upon the error assigned in the proceedings below wherein that court overruled the motion to quash the proceedings upon the ground that they were criminal in their nature, these proceedings being brought in equity.

2. It did not expressly pass upon the error committed by the court below in overruling the motion to set aside the report submitted by the committee.

3. It did not pass upon the error committed by the court below in refusing to strike out the names of the committee and substitute the name of the attorney of the United States for the District of Columbia, the committee having been biased by reason of their employment as attorneys for the plaintiff in the suit of the Buck's Stove and Range Company *vs.* Samuel Gompers *et al.*

4. The majority of the Court of Appeals erred in sustaining the court below in refusing to dismiss these proceedings, no proper replication having been filed to the plea of the statute of limitations.

5. The majority of the Court of Appeals erred in sustaining the court below in overruling the plea of the statute of limitations herein.

6. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold any respondent guilty of the charges made against him or of any of them.

7. The majority of the Court of Appeals erred in holding this respondent guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

8. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by any respondent after December 23, 1907.

9. The majority of the Court of Appeals erred in not finding that any charges against any respondent were barred by the statute of limitations.

10. The majority of the Court of Appeals erred in finding the respondent guilty of the charges against him, and also in

so doing, relying on matters not in evidence and on charges not sustained.

11. The majority of the Court of Appeals erred in inflicting a criminal punishment when sitting otherwise as a court of equity.

12. That this respondent by his appearance and answers purged himself of any possible charge of contempt, but that nevertheless the Court of Appeals erred in holding him guilty thereof.

And your petitioner claims the right to remove the said cause to the Supreme Court of the United States by writ of error by virtue of the Judicial Code of the United States, section 250, this case being one in which the construction of a law of the United States was drawn in question by the respondent, who claimed in the Supreme Court of the District of Columbia, and likewise in the Court of Appeals of said District, that he was entitled to the protection of section 1044 of the Revised Statutes of the United States, which provides that—

“No person shall be prosecuted, tried or punished for an offense not capital except as provided in section 1046, unless the indictment is found or the information is instituted within three years next after an offense shall have been committed.”

the majority of the Court of Appeals having held that this section could not be so construed as to apply to the present case on the ground that the offense charged against the respondent was not criminal and that the proceedings to punish it were not by way of criminal information, the statute being construed to refer only to such offenses as were prosecuted expressly by the regular law officer of the Government, although the wording of the statute refers to “informations” and not to “criminal informations.”

Wherefore your petitioner prays the allowance of writ of error, returnable to the Supreme Court of the United States at Washington, District of Columbia, for citation and supersedeas and that a duly authenticated transcript of the record, proceedings and papers herein be sent to the United States Supreme Court.

Dated at Washington, D. C., May —, A. D. 1913.

JACKSON H. RALSTON,
FRED'K L. SIDDONS,
WM. E. RICHARDSON,
Attorneys for Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. —.

SAMUEL GOMPERS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

ASSIGNMENTS OF ERROR.

Now comes Samuel Gompers, plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment of the Court of Appeals of the District of Columbia, in the above-entitled cause, there is manifest error, to wit:

1. It did not pass upon the error assigned in the proceedings below wherein that court overruled the motion to quash the proceedings upon the ground that they were criminal in their nature, these proceedings being brought in equity.

2. It did not expressly pass upon the error committed by the court below in overruling the motion to set aside the report submitted by the committee.

3. It did not pass upon the error committed by the court below, in refusing to strike out the names of the committee

and substitute the name of the attorney of the United States for the District of Columbia, the committee having been biased by reason of their employment as attorneys for the plaintiff in the suit of The Buck's Stove and Range Company *vs. Samuel Gompers et al.*

4. The majority of the Court of Appeals erred in sustaining the court below in refusing to dismiss these proceedings, no proper replication having been filed to the plea of the statute of limitations.

5. The majority of the Court of Appeals erred in sustaining the court below in overruling the plea of the statute of limitations herein.

6. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold any respondent guilty of the charges made against him, or of any of them.

7. The majority of the Court of Appeals erred in holding this respondent guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

8. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by any respondent after December 23, 1907.

9. The majority of the Court of Appeals erred in not finding that any charges against any respondent were barred by the statute of limitations.

10. The majority of the Court of Appeals erred in finding the respondent guilty of the charges against him, and also in so doing relying on matters not in evidence and on charges not sustained.

11. The majority of the Court of Appeals erred in inflicting a criminal punishment when sitting otherwise as a court of equity.

12. That this respondent by his appearance and answers purged himself of any possible charge of contempt, but that nevertheless the Court of Appeals erred in holding him guilty thereof.

JACKSON H. RALSTON,
FRED'K L. SIDDOES,
WM. E. RICHARDSON,

*Attorneys for Samuel Gompers,
Plaintiff in Error.*

IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, 1912.

No.

JOHN MITCHELL, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

PETITION OF JOHN MITCHELL FOR WRIT OF ERROR.

JACKSON H. RALESTON,
FRED'K L. SIDDONS,
WM. E. RICHARDSON,
Attorneys for Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No.

JOHN MITCHELL, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

PETITION OF JOHN MITCHELL FOR WRIT OF ERROR.

*To the Honorable the Chief Justice and the Associate Justices
of the Supreme Court of the United States:*

The petition of John Mitchell, one of the defendants in the above-entitled cause, respectfully shows that on the 5th day of May, 1913, the Court of Appeals of the District of Columbia entered a final judgment against your petitioner in a certain cause originally entitled, in equity, in the Supreme Court of the District of Columbia, "*In re Samuel Gompers*," wherein your petitioner was a defendant and respondent, being charged with criminal contempt of the Supreme Court of the District of Columbia.

In the original complaint in said cause Joseph J. Darlington, Daniel Davenport, and James M. Beck were appointed

a committee authorized and empowered to inquire whether there was reasonable cause to believe that this petitioner, among others, had been guilty of contempt of an order of injunction issued by the Supreme Court of the District of Columbia on or about December 18, 1907, in a cause numbered equity 27305, entitled "The Buck's Stove & Range Company, plaintiff, *vs.* The American Federation of Labor, Samuel Gompers *et al.*, defendants," and if yea they were empowered and directed forthwith to file, present, and prosecute against the respondents charges of contempt of court to the end that the authority of the court be established, vindicated and sustained; that the said committee reported that the respondents were guilty of contempt of court and had subjected themselves to due punishment therefor, the items of said report being more fully shown by the record herein; that after preliminary proceedings, more at length set forth in said record, this respondent was found guilty and sentenced by the Supreme Court of the District of Columbia, sitting in equity, to be confined in the prison of the Washington Asylum and Jail for and during the period of six months. From the said findings and decree this respondent appealed to the Court of Appeals of the District of Columbia and upon the hearing of such appeal a majority of the Court of Appeals reversed the sentence of the court below and directed said court to enter a new sentence directing this respondent to be fined the sum of \$500.00.

That in its said judgment the majority of the said Court of Appeals erred in the respects shown by the assignments of error filed herewith, and particularly among other things, in that—

1. It did not pass upon the error assigned in the proceedings below wherein that court overruled the motion to quash the proceedings upon the ground that they were criminal in their nature, these proceedings being brought in equity.

2. It did not expressly pass upon the error committed by the court below in overruling the motion to set aside the report submitted by the committee.

3. It did not pass upon the error committed by the court below in refusing to strike out the names of the committee and substitute the name of the attorney of the United States for the District of Columbia, the committee having been biased by reason of their employment as attorneys for the plaintiff in the suit of the Buck's Stove and Range Company *vs. Samuel Gompers et al.*

4. The majority of the Court of Appeals erred in sustaining the court below in refusing to dismiss these proceedings, no proper replication having been filed to the plea of the statute of limitations.

5. The majority of the Court of Appeals erred in sustaining the court below in overruling the plea of the statute of limitations herein.

6. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold any respondent guilty of the charges made against him or of any of them.

7. The majority of the Court of Appeals erred in holding this respondent guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

8. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by any respondent after December 23, 1907.

9. The majority of the Court of Appeals erred in not finding that any charges against any respondent were barred by the statute of limitations.

10. The majority of the Court of Appeals erred in finding the respondent guilty of the charges against him, and also in

so doing, relying on matters not in evidence and on charges not sustained.

11. The majority of the Court of Appeals erred in inflicting a criminal punishment when sitting otherwise as a court of equity.

12. That this respondent by his appearance and answers purged himself of any possible charge of contempt, but that nevertheless the Court of Appeals erred in holding him guilty thereof.

And your petitioner claims the right to remove the said cause to the Supreme Court of the United States by writ of error by virtue of the Judicial Code of the United States, section 250, this case being one in which the construction of a law of the United States was drawn in question by the respondent, who claimed in the Supreme Court of the District of Columbia, and likewise in the Court of Appeals of said District, that he was entitled to the protection of section 1044 of the Revised Statutes of the United States, which provides that—

“No person shall be prosecuted, tried or punished for an offense not capital except as provided in section 1046, unless the indictment is found or the information is instituted within three years next after an offense shall have been committed.”

the majority of the Court of Appeals having held that this section could not be so construed as to apply to the present case on the ground that the offense charged against the respondent was not criminal and that the proceedings to punish it were not by way of criminal information, the statute being construed to refer only to such offenses as were prosecuted expressly by the regular law officer of the Government, although the wording of the statute refers to “informations” and not to “criminal informations.”

Wherefore your petitioner prays the allowance of writ of error, returnable to the Supreme Court of the United States at Washington, District of Columbia, for citation and supersedeas and that a duly authenticated transcript of the record, proceedings and papers herein be sent to the United States Supreme Court.

Dated at Washington, D. C., May —, A. D. 1913.

JACKSON H. RALSTON,
FRED'K L. SIDDON,
WM. E. RICHARDSON,
Attorneys for Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. —.

JOHN MITCHELL, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

ASSIGNMENTS OF ERROR.

Now comes John Mitchell, plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment of the Court of Appeals of the District of Columbia, in the above-entitled cause, there is manifest error, to wit:

1. It did not pass upon the error assigned in the proceedings below wherein that court overruled the motion to quash the proceedings upon the ground that they were criminal in their nature, these proceedings being brought in equity.

2. It did not expressly pass upon the error committed by the court below in overruling the motion to set aside the report submitted by the committee.

3. It did not pass upon the error committed by the court below in refusing to strike out the names of the committee

and substitute the name of the attorney of the United States for the District of Columbia, the committee having been biased by reason of their employment as attorneys for the plaintiff in the suit of The Buck's Stove and Range Company *vs.* Samuel Gompers *et al.*

4. The majority of the Court of Appeals erred in sustaining the court below in refusing to dismiss these proceedings, no proper replication having been filed to the plea of the statute of limitations.

5. The majority of the Court of Appeals erred in sustaining the court below in overruling the plea of the statute of limitations herein.

6. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold any respondent guilty of the charges made against him, or of any of them.

7. The majority of the Court of Appeals erred in holding this respondent guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

8. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by any respondent after December 23, 1907.

9. The majority of the Court of Appeals erred in not finding that any charges against any respondent were barred by the statute of limitations.

10. The majority of the Court of Appeals erred in finding the respondent guilty of the charges against him, and also in so doing relying on matters not in evidence and on charges not sustained.

11. The majority of the Court of Appeals erred in inflicting a criminal punishment when sitting otherwise as a court of equity.

12. That this respondent by his appearance and answers purged himself of any possible charge of contempt, but that nevertheless the Court of Appeals erred in holding him guilty thereof.

JACKSON H. RALSTON,
FRED'K L. SIDDON'S,
WM. E. RICHARDSON,
Attorneys for John Mitchell,
Plaintiff in Error.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1912.

No.

FRANK MORRISON, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

**PETITION OF FRANK MORRISON FOR WRIT OF
ERROR.**

**JACKSON H. RALSTON,
FRED'K L. HIDDONS,
WM. E. RICHARDSON,**
Attorneys for Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No.

FRANK MORRISON, PLAINTIFF IN ERROR,

v/s.

THE UNITED STATES.

PETITION OF FRANK MORRISON FOR WRIT OF
ERROR.

*To the Honorable the Chief Justice and the Associate Justices
of the Supreme Court of the United States:*

The petition of Frank Morrison, one of the defendants in the above-entitled cause, respectfully shows that on the 5th day of May, 1913, the Court of Appeals of the District of Columbia entered a final judgment against your petitioner in a certain cause originally entitled, in equity, in the Supreme Court of the District of Columbia, "*In re Samuel Gompers*," wherein your petitioner was a defendant and respondent, being charged with criminal contempt of the Supreme Court of the District of Columbia.

In the original complaint in said cause Joseph J. Darlington, Daniel Davenport, and James M. Beck were appointed

a committee authorized and empowered to inquire whether there was reasonable cause to believe that this petitioner, among others, had been guilty of contempt of an order of injunction issued by the Supreme Court of the District of Columbia on or about December 18, 1907, in a cause now, heard equity 27306, entitled "The Buck's Stove & Range Company, plaintiff, *vs.* The American Federation of Labor, Samuel Gompers *et al.*, defendants," and if yes they were empowered and directed forthwith to file, present, and prosecute against the respondents charges of contempt of court to the end that the authority of the court be established, vindicated and sustained, that the said committee reported that the respondents were guilty of contempt of court and had subjected themselves to due punishment therefor, the items of said report being more fully shown by the record herein, that after preliminary proceedings, more at length set forth in said record, this respondent was found guilty and sentenced by the Supreme Court of the District of Columbia sitting in equity, to be confined in the prison of the Washington Asylum and Jail for and during the period of six months. From the said findings and decree this respondent appealed to the Court of Appeals of the District of Columbia and upon the hearing of such appeal a majority of the Court of Appeals reversed the sentence of the court below and directed said court to enter a new sentence directing this respondent to be fined the sum of \$500.00.

That in its said judgment the majority of the said Court of Appeals erred in the respects shown by the assignments of error filed herewith, and particularly among other things, in that—

1. It did not pass upon the error assigned in the proceedings below wherein that court overruled the motion to quash the proceedings upon the ground that they were criminal in their nature, these proceedings being brought in equity.

2. It did not expressly pass upon the error committed by the court below in overruling the motion to set aside the report submitted by the committee,

1. It did not pass upon the error committed by the court below in refusing to strike out the names of the respondents and substitute the name of the attorney of the United States for the District of Columbia, the respondents having been named by reason of their employment as attorneys for the plaintiff in the suit of the Truck's Store and Range Company vs. *Rational Langston et al.*

2. The majority of the Court of Appeals erred in sustaining the court below in refusing to dismiss these proceedings on proper replication having been filed in the plea of the statute of limitations.

3. The majority of the Court of Appeals erred in sustaining the court below in overruling the plea of the statute of limitations herein.

4. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold any respondent guilty of the charges made against him or of any of them.

5. The majority of the Court of Appeals erred in holding the respondent guilty of violations of the injunction of March 23, 1906, no violation thereof having been charged.

6. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by any respondent after December 23, 1907.

7. The majority of the Court of Appeals erred in not finding that any charges against any respondent were barred by the statute of limitations.

8. The majority of the Court of Appeals erred in finding the respondent guilty of the charges against him, and also in

so doing, relying on matters not in evidence and on charges not sustained.

11. The majority of the Court of Appeals erred in inflicting a criminal punishment when sitting otherwise as a court of equity.

12. That this respondent by his appearance and answers purged himself of any possible charge of contempt, but that nevertheless the Court of Appeals erred in holding him guilty thereof.

And your petitioner claims the right to remove the said cause to the Supreme Court of the United States by writ of error by virtue of the Judicial Code of the United States, section 250, this case being one in which the construction of a law of the United States was drawn in question by the respondent, who claimed in the Supreme Court of the District of Columbia, and likewise in the Court of Appeals of said District, that he was entitled to the protection of section 1044 of the Revised Statutes of the United States, which provides that—

“No person shall be prosecuted, tried or punished for an offense not capital except as provided in section 1046, unless the indictment is found or the information is instituted within three years next after an offense shall have been committed.”

the majority of the Court of Appeals having held that this section could not be so construed as to apply to the present case on the ground that the offense charged against the respondent was not criminal and that the proceedings to punish it were not by way of criminal information, the statute being construed to refer only to such offenses as were prosecuted expressly by the regular law officer of the Government, although the wording of the statute refers to “informations” and not to “criminal informations.”

Wherefore your petitioner prays the allowance of writ of error, returnable to the Supreme Court of the United States at Washington, District of Columbia, for citation and supersedeas and that a duly authenticated transcript of the record, proceedings and papers herein be sent to the United States Supreme Court.

Dated at Washington, D. C., May —, A. D. 1913.

JACKSON H. RALSTON,
FRED'K L. SIDDONS,
WM. E. RICHARDSON,
Attorneys for Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. —.

FRANK MORRISON, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

ASSIGNMENTS OF ERROR.

Now comes Frank Morrison, plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment of the Court of Appeals of the District of Columbia, in the above-entitled cause, there is manifest error, to wit:

1. It did not pass upon the error assigned in the proceedings below wherein that court overruled the motion to quash the proceedings upon the ground that they were criminal in their nature, these proceedings being brought in equity.

2. It did not expressly pass upon the error committed by the court below in overruling the motion to set aside the report submitted by the committee.

3. It did not pass upon the error committed by the court below in refusing to strike out the names of the committee

and substitute the name of the attorney of the United States for the District of Columbia, the committee having been biased by reason of their employment as attorneys for the plaintiff in the suit of The Buck's Stove and Range Company *vs.* Samuel Gompers *et al.*

4. The majority of the Court of Appeals erred in sustaining the court below in refusing to dismiss these proceedings, no proper replication having been filed to the plea of the statute of limitations.

5. The majority of the Court of Appeals erred in sustaining the court below in overruling the plea of the statute of limitations herein.

6. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold any respondent guilty of the charges made against him, or of any of them.

7. The majority of the Court of Appeals erred in holding this respondent guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

8. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by any respondent after December 23, 1907.

9. The majority of the Court of Appeals erred in not finding that any charges against any respondent were barred by the statute of limitations.

10. The majority of the Court of Appeals erred in finding the respondent guilty of the charges against him, and also in so doing relying on matters not in evidence and on charges not sustained.

11. The majority of the Court of Appeals erred in inflicting a criminal punishment when sitting otherwise as a court of equity.

12. That this respondent by his appearance and answers purged himself of any possible charge of contempt, but that nevertheless the Court of Appeals erred in holding him guilty thereof.

JACKSON H. RALSTON,
FRED'K L. SIDDON'S,
WM. E. RICHARDSON,
Attorneys for Frank Morrison,
Plaintiff in Error.

RECEIVED
JAN 24 1913
U.S. DEPT. OF JUSTICE

SUPREME COURT OF THE UNITED STATES

Current Term, 1912

No. ~~11-55~~ 574

**EX PARTE SAMUEL GOMPERS, JOHN MITCHELL
AND FRANK MORRISON, PETITIONERS**

Petition for the Issuance of a Writ of Habeas Corpus
The Court of Appeals of the District of Columbia to Certify
to the Supreme Court of the United States for its Review
and Determination the Appeal Taken by the Petitioners
against the United States, Prosecuting by Certificate, in
the United States of Alleged Conspiracy Entitled Respec-
tively "In re Samuel Gompers," "In re John Mitchell"
and "In re Frank Morrison," Being Cases No. 247 in
the Court of Appeals.

JACKSON H. RALSTON,
FREDERICK L. SIDDONS,
WILLIAM E. RICHARDSON,

Attorneys for Petitioners

ALTON B. PARKER,

Of Counsel

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No.

EX PARTE SAMUEL GOMPERS, JOHN MITCHELL,
AND FRANK MORRISON, PETITIONERS.

Petition for the Issuance of a Writ of Certiorari Requiring the Court of Appeals of the District of Columbia to Certify to the Supreme Court of the United States for its Revision and Determination the Appeal Taken by the Petitioners against the United States, Prosecuting by Committee, in the United Cases of Alleged Contempt Entitled Respectively "In re Samuel Gompers," "In re John Mitchell" and "In re Frank Morrison," Being Cause No. 2477 in the Court of Appeals.

*To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The petition of Samuel Gompers, John Mitchell, and Frank Morrison respectfully represents as follows:

1. The petitioners are all citizens of the United States, the said Samuel Gompers and John Mitchell being residents of

the State of New York, and the said Frank Morrison being a resident of the State of Illinois.

2. That heretofore, to wit, on the 26th day of June, 1911, there was filed in the Supreme Court of the District of Columbia a cause known as Equity No. 30,180, and including three reports charging respectively Samuel Gompers, John Mitchell, and Frank Morrison with having been guilty of contempts of court in violating a certain preliminary restraining order granted in Equity Cause No. 27,305, entitled "The Buck's Stove and Range Company, plaintiff, *vs.* The American Federation of Labor *et al.*, defendants," which said cause had formerly been pending in said Supreme Court. That the committee making said charges, consisting of J. J. Darlington, James M. Beck, and Daniel Davenport, all of whom had been attorneys for the plaintiff in said cause of The Buck's Stove and Range Company, and in the progress of their work had theretofore prosecuted a case of alleged civil contempt against the same respondents, and had repeatedly declared their conviction of their guilt, nevertheless had been appointed to determine and report to the court whether, in their judgment, the offense of contempt had been committed, and if so to prosecute the same. That the said respondents were cited to appear and answer said charges of contempt and did so in the manner more fully shown by the record filed herewith, among other things maintaining that the offenses charges against them, if committed at all, had been committed more than three years prior to the filing of the report of said committee. That said defense of the statute of limitations was overruled and disregarded in whatever form presented to the Supreme Court of the District of Columbia, which court, after the taking of certain testimony, found these defendants guilty of the several offenses charged against them, the opinion of the Supreme Court of the District of Columbia more fully and at large appearing on pages 70 to 131 of the

record herein. That consequent upon such finding of guilty, the petitioner herein, Samuel Gompers, was ordered to be confined in jail for twelve months; the petitioner John Mitchell for nine months, and the petitioner Frank Morrison for six months, and from such orders an appeal was taken to the Court of Appeals of the District of Columbia. That upon the hearing of said cause in the Court of Appeals of the District of Columbia, a majority of said court sustained the findings of guilty of the Supreme Court of the District of Columbia and directed an order to be entered reversing the judgments below, and directing the entry of a new judgment, inflicting a penalty of thirty days in jail upon the respondent Samuel Gompers, and the imposition of a fine of \$500.00 each upon the respondents John Mitchell and Frank Morrison, while the Chief Justice of said court dissenting, considered that the plea of the statute of limitations was good, and that judgment should be entered in favor of the several respondents.

Your petitioners, each for himself, respectfully represent that the trial court as well as the majority of the Court of Appeals erred in their conclusions of fact, and that the Court of Appeals further erred in its specific conclusions of fact and its conclusions of law, among other things, in the following respects:

1. The said court did not pass expressly upon error assigned in the proceedings below, wherein that court overruled motion to quash the same upon the ground that they were criminal in their nature, these proceedings being brought in equity.

(It will be noted that the proceedings in the case as to which contempt is charged had completely terminated on February 20, 1911 (219 U. S., 581), so that any proceedings to be commenced against the respondents were so commenced entirely independently of any pending action, and were of such nature as should have been brought, if at all, on the law side of the court.)

2. It did not expressly pass upon the error committed by the court below in overruling the motion to set aside the report submitted by the committee.

(This motion was based upon the fact as shown by the record (pages 22 and 23) that the committee had disqualified themselves by prior expressions from a power to impartially report to the court as to whether the respondents had or had not been guilty of any contempt. Any report made by them was of necessity colored by the decided positions they had already taken.)

3. It did not pass upon the error committed by the court below in refusing to strike out the names of the committee and substitute the name of the attorney of the United States for the District of Columbia, the committee having been biased by reason of their employment as attorneys for the plaintiff in the suit of the Buck's Stove and Range Company vs. Samuel Gompers *et al.*

4. The majority of the Court of Appeals erred in sustaining the court below in refusing to dismiss these proceedings, no proper replication having been filed to the plea of the statute of limitations.

5. The majority of the Court of Appeals erred in sustaining the court below in overruling the plea of the statute of limitations herein.

(The objections four and five, above mentioned, and nine hereafter referred to, are all based upon the statute of limitations interposed by the respondents as an absolute bar to the proceedings herein, but reliance upon which was denied by the Supreme Court of the District of Columbia, and by a majority of the Court of Appeals, the Chief Justice dissenting.)

6. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold any respondent guilty of the charges made against him, or of any of them.

(The position of the respondents with reference hereto is more fully and at large set out in the brief filed at this time.)

7. The majority of the Court of Appeals erred in holding this respondent guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

(The position of the respondents with reference hereto is more fully and at large set out in the brief filed at this time.)

8. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by any respondent after December 23, 1907.

9. The majority of the Court of Appeals erred in not finding that any charges against any respondent were barred by the statute of limitations.

(The position of the respondents with reference to 8 and 9 is more fully and at large set out in the brief filed at this time.)

10. The majority of the Court of Appeals erred in finding the respondents guilty of the charges against them, and also in so doing relying on matters not in evidence and on charges not sustained.

11. The majority of the Court of Appeals erred in inflicting a criminal punishment when sitting otherwise as a court of equity.

~~12. The majority of the Court of Appeals erred in undertaking to direct any punishment whatsoever to be administered to any respondent when it reversed the judgment of~~

the court below, its only power thereafter being to permit a new trial to be had pursuant to its opinion, and failing so to do, depriving these respondents, who were adjudged improperly punished, of an opportunity of again confronting their accusers when it was sought to administer what the Court of Appeals considered a proper punishment to them.

12 ~~43~~ That these respondents by their appearance and answers purged themselves of any possible charge of contempt, but that nevertheless the Court of Appeals erred in holding them guilty thereof.

Your petitioners respectfully represent that there are involved in the record, as above shown, certain principles important in their bearing upon the development of human liberty. That if the position taken by the majority of the Court of Appeals be correct, the courts of this country possess the unrestrained right, and at any distance of time after the commission of a supposed offense against their dignity (an offense, if in any case one at all, against the dignity of the Government, and not of one of its branches), to pursue the offender, a right which exists in no other branch of the Government, and the existence of which negatives all the ideas of the advantages of judicial peace through the passing of time, inculcated by philosophical writers, lawyers, and judges. That to permit the punishment of men for alleged contempt years after the time of the act supposed to have been committed, and when the materials necessary for defense may have been destroyed, is to lay the foundation for future injustice. That this question, important as it is, has never been passed upon by any Federal court, save in this instance by the District Court of Appeals, and then only by a divided bench.

That to permit the preliminary determination of the question as to whether the offense of contempt of court has been committed to rest in the hands of men, however reputable, who have expressed an abiding conviction of the guilt of

those who are supposed to have offended, would be directly to attack the dignity of the courts themselves, is a violation of judicial discretion, and calculated to bring the process of law into contempt, and that for these and for other reasons manifest upon the face of the record, the case is of such broad general interest and importance as determining the principles upon which contempt and procedure to punish the same should rest, as to justify a final solution at the hands of this honorable court.

Wherefore your petitioners pray that a writ of certiorari be issued out of and under the seal of this court, directed to the Court of Appeals of the District of Columbia, commanding said court to certify and send to this court a full and complete transcript of the record and all proceedings in the said Court of Appeals in the case entitled "Samuel Gompers, John Mitchell, and Frank Morrison, appellants, *vs.* The United States," being No. 2477, to the end that the said case may be reviewed by this court as provided by law, and that the judgment and sentences of the said Court of Appeals of the District of Columbia in said case may be reversed by this honorable court.

And your petitioners will ever pray.

SAMUEL GOMPERS,
JOHN MITCHELL,
FRANK MORRISON,
By JACKSON H. RALSTON,
Their Attorney.

DISTRICT OF COLUMBIA, ss:

Frank Morrison, being first duly sworn, deposes and says that he has read the foregoing petition for certiorari, by him signed, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters and things therein stated upon information and belief, and that as to the same he believes it to be true.

FRANK MORRISON.

Subscribed and sworn to before me this — day of May,
A. D. 1913.

Notary Public, D. C.

IN THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA, APRIL TERM, 1913.

No. 2477.

SAMUEL GOMPERS, JOHN MITCHELL, FRANK MORRISON,
Appellants,

vs.

THE UNITED STATES, *Appellee.*

*J. J. Darlington, James M. Beck, and Daniel Davenport,
Committee Acting for the United States:*

Notice is hereby given that upon the verified petition of Samuel Gompers, John Mitchell, and Frank Morrison, appellants in the above case, and upon all the pleadings and proceedings, we shall, on Monday, May 26, 1913, at the opening of court on that day, or as soon thereafter as counsel can be heard, submit a motion, copy of which is hereby served upon you, to the Supreme Court of the United States, at the Capitol, in the city of Washington, D. C.

JACKSON H. RALSTON,
FREDERICK L. SIDDON, S,
WILLIAM E. RICHARDSON,
Attorneys for Petitioners.

ALTON B. PARKER,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED
STATES, OCTOBER TERM, 1912.

No. —.

Ex Parte SAMUEL GOMPERS, JOHN MITCHELL, and FRANK
MORRISON, *Petitioners*.

Now come Samuel Gompers, John Mitchell, and Frank Morrison, by Alton B. Parker, Jackson H. Ralston, Frederick L. Siddons, and William E. Richardson, their counsel, and move this honorable court that it shall, by certiorari, or other proper process, directed to the honorable justices of the Court of Appeals for the District of Columbia, require the said court to certify to this court for its review and determination, a certain cause in said Court of Appeals, lately pending, wherein the said Samuel Gompers, John Mitchell, and Frank Morrison were appellants and The United States was appellee, being No. 2477, and to that end now tender herewith their petition, together with a certified copy of the entire record in said case in said Court of Appeals.

JACKSON H. RALSTON,
FREDERICK L. SIDDONS,
WILLIAM E. RICHARDSON,

Attorneys for Petitioners.

ALTON B. PARKER,
Of Counsel.

6
Office Supreme Court, U. S.
FILED.

MAY 26 1913

JAMES H. MCKENNEY,

CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. ~~1145~~. 574

IN THE MATTER OF THE PETITION OF SAMUEL GOMPERS,
JOHN MITCHELL, AND FRANK MORRISON FOR THE
ISSUANCE OF A WRIT OF CERTIORARI.

**PETITIONERS' BRIEF ON MOTION FOR ISSUANCE OF
WRIT OF CERTIORARI.**

JACKSON H. RALSTON,
FREDERICK L. SIDDONS,
WM. E. RICHARDSON,
Petitioners' Attorneys.

ALTON B. PARKER,
Of Counsel.

TABLE OF CONTENTS.

	Page
Statement of facts	1
Samuel Gompers	2-8
Preliminary injunction of December 18, 1907	9
Final decree of March 23, 1908	10
Amended decree of Court of Appeals	11
John Mitchell	9-12
Frank Morrison	13-14
Rules to show cause and subsequent motions and pleadings	14-17
Testimony	17-21
Resolution of U. M. W. of A	18
Editorial—"A Self-Inflicted Boycott"	18
Motion to quash	21
Sentences	21
History of prior litigation	22
Specifications of error	22
Argument	26
Theory as to real nature and effect of charges	26
Seventh specification	26
I. Fourth, fifth, and ninth specifications	32
Statutory provisions	33
What is the essence of contempt?	33
Is contempt of court a crime and were proceedings in this case criminal?	36
Contempt of court may be pardoned by the President as a crime	49
Writ of error to Supreme Court not allowed, as contempt is criminal	49
Method of trial no criterion as determining whether criminal contempt is crime	50
Right to be informed of accusation and confront wit- nesses	54
What constitutes a criminal information	55
Has the Supreme Court of the District of Columbia in- herent power to punish for contempt?	60
Decisions supporting plea of statute of limitations in criminal contempt	64
Want of proper replication to the plea of the statute of limitations	65
As to what charges the plea of the statute was available	68
Résumé as to plea of statute of limitations	69

	Page
II. Sixth and eighth specifications.....	71
The respondents convicted in trial court, not of contempt of court, but of want of respect for judicial authority.....	71
No evidence of the existence of any unlawful boycott after December 23, 1907.....	77
Respondents' definition of "boycott".....	78
General considerations as to guilt or innocence of respondents.....	82
Samuel Gompers.....	87
John Mitchell.....	96
Frank Morrison.....	99
III. Tenth specification.....	100
IV. First, second, third, and eleventh specifications.....	102
V. Twelfth specification.....	103
VI. Sentence fixed by the Court of Appeals.....	104
Conclusion.....	106

STATUTES CITED.

Constitution, 6th Amendment.....	48
District Code, section 67 (Certification of Cases).....	27
Rev. St. U. S., section 725 (Contempts).....	33
Rev. St. U. S., section 1044 (Limitations).....	33

AUTHORITIES CITED.

Clark's Criminal Procedure, p. 240.....	66
Ency. of Law, vol. 6 (2d ed.), p. 974.....	53
Ency. of Pleading and Practice, vol. 13, pp. 234, 238.....	66
Halsbury's Laws of England—titles, Contempt and Criminal Law and Procedure.....	45
Harvard Law Review, article by Prof. J. H. Beale, Jr.....	43
Hawkins's Pleas of the Crown, vol. II.....	56
Jurist, vol. 6, p. 161.....	51
Law Quarterly Review for January, 1908, article by J. C. Fox.....	37
Opinions Attorneys General:	
Vol. 3, p. 622.....	47, 49
Vol. 4, p. 317.....	47
Vol. 4, p. 458.....	47, 49
Vol. 5, p. 579.....	49
Vol. 19, p. 476.....	49
Oswald on Contempt.....	44
Story on the Constitution, section 791.....	52
Transactions Royal Historical Society (N. S.), vol. 3, 1886, article by Solly Flood.....	37, 58

INDEX.

iii

Page

TABLE OF CASES.

Acker, <i>In re</i> , 46 Fed., 291.....	48
Anagyros <i>vs.</i> Anagyros & Company, 191 Fed., 208.....	47
Attrill <i>vs.</i> Huntington, 70 Md., 199.....	67
Beattie <i>vs.</i> The People, 133 Ill. App., 651.....	64
Beukalaer <i>vs.</i> People, 25 Ill. App., 460.....	106
Blush, <i>In re</i> , 48 Pac., 147.....	59
Rollman and Swartwout, 4 Cranch, 93.....	62
Buck's Stove & Range Co. <i>vs.</i> Am. Fed. of Labor <i>et al.</i> , 33 App. D. C., 83; 219 U. S., 581.....	21
Bullock E. & M. Co. <i>vs.</i> Westinghouse E. & M. Co., 129 Fed., 105.....	47
Callan <i>vs.</i> Wilson, 127 U. S., 540.....	52
Cartwright's case, 114 Mass., 230.....	60
Castner <i>vs.</i> Pocahontas Collieries Co., 117 Fed., 184.....	46
Clark <i>vs.</i> Mayfield, 3 Cranch, 353; Fed. Cases, No. 2858.....	67
Davis's case, Dyer's Rep., p. 188 <i>b</i>	42
Davis <i>vs.</i> Boyett, 66 L. R. A., 258.....	67
Drew <i>vs.</i> Hogan, 26 App. D. C., 55.....	87
Edwards, <i>Ex parte</i> , 11 Fla., 174.....	105
Ellerbe, <i>In re</i> , 13 Fed., 530.....	46
Fischer <i>vs.</i> Hayes, 6 Fed., 68.....	46
Flathers <i>vs.</i> State, 125 Pa., 902.....	46
Foote, <i>In re</i> , 76 Cal., 543.....	54
Fuller's case, 12 Rep., 41.....	42
Galland <i>vs.</i> Galland, 44 Cal., 475.....	106
Gompers <i>et al.</i> <i>vs.</i> Buck's Stove & Range Co., 219 U. S., 581; 33 App. D. C., 82.....	22
Gompers <i>vs.</i> Buck's Stove & Range Company, 221 U. S., 418; 55 L. Ed., 797; 33 App. D. C., 516.....	23, 49
Gordon <i>vs.</i> Commonwealth, 133 S. W., 206; 141 Ky., 461.....	65
Gould <i>vs.</i> Sessions, 67 Fed., 163.....	48
Harrison's case, Cro. Car., 503.....	42
Herman <i>vs.</i> State, 74 N. W., 1097; 54 Neb., 626.....	59
Hummey's case, Howell's State Trials, vol. 2, p. 1074.....	41
Hurley <i>vs.</i> Commonwealth, 74 N. E., 677; 188 Mass., 443.....	50, 59
Hutton <i>vs.</i> Superior Court, 81 Pac., 409; 147 Cal., 156.....	59
Kansas <i>vs.</i> Vincent, 46 Kansas, 618.....	60
Kansas <i>vs.</i> Henthorn, 46 Kansas, 612.....	60
Kearney, <i>Ex parte</i> , 7 Wheaton, 38, 43.....	45
King <i>vs.</i> Almon, L. Q. R. (1908).....	37
King <i>vs.</i> Barnes, 113 N. Y., 476.....	105
Lester <i>vs.</i> People, 150 Ill., 424.....	48
Maloney <i>vs.</i> Travise, 87 Iowa, 306.....	59
Mullee, <i>Ex parte</i> , Fed. Cases, No. 9911.....	47

	Page
Myers <i>vs.</i> State, 46 Ohio St., 473.....	105
New Orleans <i>vs.</i> N. Y. Mail Steamship Company, 20 Wall., 387....	46, 48
Nikell, <i>In re</i> , 47 Kansas, 734.....	60
Otis <i>vs.</i> Superior Court of Los Angeles County, 82 Pac., 815; 147 Cal., 156.....	59
Patterson, <i>In re</i> , 99 N. C., 418.....	106
Peck's Trial, p. 294.....	62
Peck's Trial, p. 402.....	35
People <i>vs.</i> Miller, 12 Cal., 291.....	67
People <i>vs.</i> Neill, 74 Ill., 68.....	65
People <i>vs.</i> Wilson, 64 Ill., 195.....	60
Pierce, <i>In re</i> , 44 Wis., 411.....	106
Pierce <i>vs.</i> U. S., 37 App. D. C., 582, 589.....	49
Pollard, <i>In re</i> (5 Moore P. C. (N. S.), 111; L. R., 2 P. C., 106)....	44
Post <i>vs.</i> State, 7 Ohio Decisions, 257.....	59
Radley's case, 7 Howell's State Trials, p. 702.....	42
Robertson, <i>Ex parte</i> , 27 Texas Apps., 628.....	106
Robertson <i>vs.</i> Baldwin, 165 U. S., 276.....	53
Robinson, <i>Ex parte</i> , 9 Wall., 505.....	62
Schull, <i>In re</i> , 221 Mo., 623; 133 Am. St. Rep., 496.....	46
Secor <i>vs.</i> T., P. & W. R. R. Co., Fed. Cases, No. 12605.....	104
Shipp case, 215 U. S., 582.....	105
Shoup <i>vs.</i> State, 102 Tenn., 9.....	49
Sloman <i>vs.</i> Reilly, 95 Mich., 264.....	105
Snyder <i>vs.</i> State, 52 N. E., 152; 151 Ind., 553.....	59
State <i>vs.</i> Bilbo, 19 La. Ann., 76.....	67
State <i>vs.</i> Keene, 11 La., 596.....	105
State <i>vs.</i> Pierce, 19 L. R. A., 90.....	67
State <i>vs.</i> Rust, 2 Tenn. (Ch.), 181.....	105
State <i>vs.</i> Sauvinet, 24 La. Ann., 119.....	49
State <i>vs.</i> Van Orden, 21 La. Ann., 119.....	49
Stewart <i>vs.</i> State, 140 Ind., 7; 39 N. E., 508.....	58
Stickney, <i>Ex parte</i> , 4 S. & M., 751.....	49
Thomas, <i>Ex parte</i> , 10 Mo. App., 24, 25.....	55
Thompson <i>vs.</i> State, 54 Miss., 755.....	66
Williamson's case, 26 Pa. State, 18.....	46
Wilbraham's case, Howell's State Trials, vol. 2, p. 1074.....	41-42
Wood, <i>In re</i> , 45 N. W., 113; 82 Mich., 75.....	59
Wood <i>vs.</i> Carpenter, 101 U. S., 135.....	67
Wraynham's case, Howell's State Trials, vol. 2, p. 1074.....	42
U. S. <i>vs.</i> Jacobi, Fed. Cases, No. 15,460.....	47
U. S. <i>vs.</i> Kane, 23 Fed., 748.....	104
Worlan <i>vs.</i> State, 52 Ind., 49.....	60

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No.

IN THE MATTER OF THE PETITION OF SAMUEL GOMPERS,
JOHN MITCHELL, AND FRANK MORRISON FOR THE
ISSUANCE OF A WRIT OF CERTIORARI.

**PETITIONERS' BRIEF ON MOTION FOR ISSUANCE OF
WRIT OF CERTIORARI.**

The petitioners having filed herewith a petition for a writ of certiorari, requiring the Court of Appeals of the District of Columbia to certify to this court the record in the case in which they are appellants and the United States, acting at the instance of a committee, is the appellee, we respectfully submit the following:

Statement of Facts.

On May 16, 1911, Mr. Justice Gould, sitting in equity (Record, p. 1), certified to Mr. Justice Wright, at that time presiding in a court of law, all matters relating to an alleged violation by certain defendants of an injunction order here-

before issued, for whatever action was appropriate to be taken. This order was made in the equity case of the Buck's Stove & Range Company *vs.* The American Federation of Labor and at the time of its making there was nothing pending in the equity court pertaining to any such violation.

On the same day (Record, p. 2), by an order filed in a new cause entitled "In Equity, No. 30,180," and signed by Mr. Justice Wright, it is recited that it appeared to the court that there was reason to believe that Samuel Gompers, John Mitchell, and Frank Morrison were guilty of contempt of the Supreme Court of the District of Columbia, in wilfully violating the terms of an order of injunction issued on or about December 18, 1907, in Equity No. 27,305, entitled "The Buck's Stove & Range Company *vs.* The American Federation of Labor *et al.*, and thereupon the court ordered that J. J. Darlington, Daniel Davenport, and James M. Beck be empowered to inquire whether there was reasonable cause to believe the said persons guilty as stated, and if so, they were directed forthwith to prepare, file, present, and prosecute against them charges of contempt of court.

Samuel Gompers.

Under such order of May 16, the said committee reported in the case of Samuel Gompers (Record, p. 2), that the equity court had granted, on December 18, 1907, an injunction restraining Samuel Gompers and others from boycotting, in the manner therein set out, the business of the Buck's Stove & Range Company, and that such decree of injunction *pendente lite* was followed (Record, p. 4) on March 23, 1908, by a final decree enjoining them from doing any of the things set out in the decree of December 18, 1907, and that there was reasonable ground to believe, and it was charged, that he had been guilty of contempt in wilfully violating the terms of the said injunction in the following particulars:

1. Because of the circulation of a large number of copies of the January, 1908, *American Federationist*, of which he was editor, containing the name of the Buck's Stove & Range Company on the "We Don't Patronize List," such circulation being through the American News Company, and that he hurried such printing to anticipate the issuance of the injunction.

2. That after the filing of the injunction undertaking he further circulated, through the mails and otherwise, the January, 1908, *Federationist*, containing the list aforesaid.

3. That after December 23, 1907, he circulated and permitted to be circulated publicly several thousand copies of the printed proceedings of the convention of the American Federation of Labor held at Norfolk, Virginia, in November, 1907, which referred to the name of the Buck's Stove & Range Company in connection with the "We Don't Patronize List," and which in addition contained:

(a) Report by said Gompers to the convention discussing the legality of the boycott and the necessity of an appeal for the change of any law curbing it, and suggesting that in the event of an injunction being issued there could be added after the name of an unfair firm and the statement of grievance complained of, the words "We have been enjoined by the courts from boycotting this concern";

(b) An editorial written and published by him, of which he had circulated thirty thousand copies, discussing an opinion of Justice Gould rendered in the case, which editorial was originally published in the February, 1908, *Federationist*, the particular matter complained of appearing on the record on pages 6 and 7.

4. Following the injunction order of December 18, he published in the February, 1908, *Federationist*, a copy of

the decree of injunction, with an editorial as to its effect, which was immediately followed by articles and editorials in journals, etc., published in the interest of the affiliated bodies composing the Federation of Labor.

5. That on or about January 24, 1908 (Record, p. 9), he united with Frank Morrison, John Mitchell and others in circulating many thousand copies of a paper designated by them as "An Urgent Appeal for Financial Aid in Defense of Free Press and Free Speech," and caused the same to be printed in the February, 1908, *Federationist*, and that he caused to be reprinted and circulated, with the Urgent Appeal, thousands of copies of the editorial contained in the February, 1908, *Federationist*, which editorial is set out in paragraph 4, for the purpose of suggesting to members of the Federation and others in sympathy that they might violate the injunction of the court and defeat its object and purpose provided they were not or should not come within the territorial limits of the District of Columbia.

6. That in March, 1908, *Federationist*, he published in the editorial columns the following:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

7. That in the April, 1908, *Federationist*, issued after the final decree of the court making perpetual the injunction *pendente lite*, he published an editorial containing the following:

"The temporary injunction issued by Justice Gould, of the court of equity of the District of Columbia, in the (Van Cleave) Buck's Stove & Range Company of St. Louis against the American Federation of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia.

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

"And, in another column of the April, 1908, copy of the *Federationist*, the said Samuel Gompers published the following:

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove & Range Company of St. Louis. Fellow-workers, be true and helpful to yourselves and to each other. Remember that united effort in the cause of right and justice must triumph."

8. That in a public address to an audience of working people in the city of New York April 19, 1908, he said:

"They tell us that we must not boycott. Well, if the boycott is illegal, we won't boycott. But I have no knowledge that any law has been passed or any order issued by any court compelling us to buy, for instance, a range or a stove from the Buck's Stove and Range Company. You know that myself and several are enjoined from telling you, and we are not prepared to tell you, that the Buck's Stove and Range Company is unfair. There are a number of men who have been having suit brought against them for two hundred and forty thousand dollars. That is not very much, between you and me; but a few hatters in Danbury, Connecticut, are being sued for saying that Loewe & Company, hat manufacturers of Danbury, Connecticut, are unfair. I am not prepared to say that that is in violation—that they are unfair."

"Of course, in the case of the Buck's Stove and Range Company, if I told you that the Buck's Stove and Range Company was still unfair, when I got back to Washington tomorrow or some place where they say people play checkers with their noses—well, as I say, I am not prepared to tell you that these things are unfair. But there is no law, no court decision that compels you to buy them, nor does any law compel you to buy anything without the union label."

9. That in a public address before a large gathering of working people, about May 1, 1908, in Chicago, he said:

"I might say just parenthetically about the hat-ters' case that you are not now permitted to boycott the Loewe hats, but I want to call your attention to the fact that there is no law compelling you to wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. That applies equally to Mr. Van Cleave's stoves and ranges. And, by the way, I don't know why you should buy any of that sort of stuff, I don't; but that is a matter to which we can refer more particularly in our organizations."

10. That in the July, 1908, *Federationist*, he published an editorial as follows:

"The Supreme Court of the District of Columbia has made permanent the injunction issued by Justice Gould enjoining the American Federation of Labor, its officers, its affiliated unions and their members and friends from declaring that the Van Cleave Buck's Stove and Range Company of St. Louis is on the unfair list of the American Federation of Labor or the publication of that statement in the *American Federationist*. An appeal will be taken to the Court of Appeals of the District of Columbia, and, if necessary to the United States Supreme Court. The injunction does not compel any one to buy the Van Cleave Buck Stoves and Ranges, nor has any decree been issued compelling any one to buy Loewe's hats."

11. That in the September, 1908, *Federationist* he published the following:

"We have also witnessed in the past year most serious judicial invasion and usurpation of individual liberty and human freedom by the abuse of the writ of injunction.

"An attempt has been made by the abuse of the writ of injunction to deny and prohibit the freedom of speech and the freedom of the press; and men have been cited to show cause why they should not

7

be punished purely for the right of free press and free speech—rights not only natural and inherent in themselves, but guaranteed by the Constitution of our country, and which our forefathers fought to save, and which a free people never dreamed would ever be placed in jeopardy."

12. That in his report to the Executive Council of the Federation, dated September 9, 1908, and thereafter published in the *American Federationist* in November, 1908, he discussed at length the suit above referred to, under the title of the "Buck's Stove & Range Company Injunction Suit," the language of which is set forth in the record, page 12.

13. That in an address in Indianapolis, September 29, 1908, he discussed at length the suit above referred to.

14. That in a public address in Baltimore, Maryland, about October 26, 1908, he further discussed the said injunction suit.

15. That at a reception tendered by labor organizations in November, 1908 (Record, p. 13), he discussed at length the same suit and the injunctions referred to.

16. That in a report made by him to the convention of the Federation of Labor, held November, 1909, he further discussed the injunction granted on December 18, 1907, as follows:

"When a judge so far transcends his authority and assumes functions entirely beyond his power and jurisdiction; when a judge will set himself up as the highest authority in the land, invading constitutionally guaranteed rights of citizens; when a judge will go so far in opinion, decision, and action, that even judges of Court of Appeals have felt called upon to criticise his action, 'unwarranted' and 'foolish,' under such circumstances it is the duty of the citizen to refuse obedience and to take whatever consequences may ensue."

The committee further reported that all of the foregoing publications, statements, and acts were in violation of the injunction decree in the equity cause referred to and were done for the purpose of inducing others to disregard and violate the injunction of the court and defeat it, and that in each of them the said Gompers was guilty of contempt of court and had subjected himself to punishment therefor.

There was attached to the foregoing report, which was under oath, as exhibits, the decrees mentioned of December 18, 1907, and March 23, 1908, given below, to which we add the amended decree of the Court of Appeals on appeal in the original cause.*

* EXHIBIT "A."

Permanent Injunction of December 18, 1907.

"This cause coming on to be heard upon the petition of the complainant for an injunction *pendente lite* as prayed in the bill and the defendants' return to the rule to show cause issued upon the said petition having been argued by the solicitors for the respective parties, and duly considered, it is thereupon by the court, this 18th day of December, A. D. 1907, ordered, that the defendants, The American Federation of Labor, Samuel Gompers, Frank Harrison, John B. Latham, James Duncan, John Mitchell, James McManis, May Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valente, Rodney L. Thinton, Chilton C. Buckingham, Herman C. Poole, Arthur L. Williams, Samuel H. Cowper, and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates and aid and all persons acting in aid of or in conjunction with them or any of them do, and they hence are restrained and enjoined until the final decree in said cause from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business or defendants or or any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails or in any other manner any copies or any of the "Lawless and Immoral," or any other printed or written newspaper, magazine, circular, order or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant or the business of its product in the "We Don't Patronize" or the "We

John Mitchell.

On the same day (Record, p. 135) the same committee reported as to John Mitchell that there was reasonable cause to believe that he was guilty of violating the terms of an injunction issued in the same case, and after recitals as to the

fact: "That of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term 'Unfair' or with the 'We Don't Patronize' list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention of complainant's customers, or of dealers, or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be 'unfair' or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or leading to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession slaves, negroes, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other States and Territories of the United States, or elsewhere whatsoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the facts or things aforesaid.

And it is further ordered by the court that this order shall be in full force, obligatory and binding upon the said defendants, and each of them, and their said officers, members, agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them upon the service of a copy hereof upon them or their solicitors or solicitor of record in this cause: Provided the complainant shall first execute and file in this cause, with surety or sureties, to be approved by the court or one of the justices thereof, an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitably suing out this injunction, and stipulating that the damages may be ascertained in such manner as the justice of this court shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

ASHLEY M. GOULD, Justice.

decrees, he was charged with contempt in the following particulars:

1. That as one of the Vice-Presidents of the Federation and a member of its Executive Council, he united with Samuel Gompers, Frank Morrison, and others in printing and

EXHIBIT "B."

Final Decree of March 23, 1908.

The above entitled cause coming on at this time for final hearing, and having been submitted to the court by the respective parties, through their solicitors, upon the pleadings and the evidence, and having been duly considered, it is thereupon by the court this 23d day of March, A. D. 1908, adjudged, ordered, and decreed that the defendants The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper, and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, perpetually restrained and enjoined from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm, or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing or distributing through the mails, or in any other manner, any copies or copy of the "*American Federationist*," or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize" or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating whether in writing or orally, any statement or notice of any kind or character whatsoever, calling attention to the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "Unfair," or that it should not be purchased or dealt in or handled by any dealer,

widely circulating several thousands of the "Urgent Appeal," hereinbefore referred to, and also caused the same to be printed in the February, 1908, *Federationist*, and caused to be circulated in connection with the said "Urgent Appeal"

tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant and from threatening or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in the complainant's product, either directly or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other States and Territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid. And it is further adjudged, ordered, and decreed that the complainant recover against the defendants the costs of this suit, to be taxed by the clerk, and that it have execution therefor as at law.

HARRY M. CLARAUGH,

Chief Justice.

• • • • •
EXHIBIT "C."

Amended Decree of Court of Appeals.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, modified and affirmed as follows:

It is adjudged, ordered and decreed that the defendants, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper, and Edward L. Hickman, individually and as representatives of the American Federation of Labor, their and each of their agents, servants, and confederates, be, and they hereby are, perpetually restrained and enjoined from conspiring or combining to boycott the business or product of complainant, and from threatening or declaring any boycott against said business or product, and from abetting, aiding or assisting in any such boycott, and from directly or indirectly threatening, coercing or intimidating any person or persons

thousands of copies of a reprint of an editorial in the February, 1908, *Federationist*, hereinbefore referred to.

2. That with full knowledge of its contents he caused and assisted in causing thousands of copies to be circulated of the injunction of December, 1908, with an editorial comment thereon indicating that persons outside of the District of Columbia might violate the injunction and defeat its object and purpose, provided they should not come within the territory of the District of Columbia.

3. That on or about January 25, 1908, he presided over a meeting of the United Mine Workers of America, associated with the Federation of Labor, and entertained, put to a vote and declared adopted a resolution placing the Buck's stove and ranges on its unfair list, and providing that any member of the United Mine Workers purchasing a stove of that make should be fined five dollars, and, failing to pay the same, be expelled, and that subsequently, in an address before a convention of the Mine Workers at Indianapolis, he used the language set out in full on page 141 of the record.

The committee further reported that all of these publications, statements, and acts were in violation of the injunction decree of the court in said equity cause and for the purpose of inducing others to disregard and violate the injunction of the court and defeat it, and that in each of them he was guilty of contempt. This report was also sworn to:

whosoever from buying, selling or otherwise dealing in complainant's product, and from printing the complainant's business or product in the "We Don't Patronize" or "Unfair" list of defendants in furtherance of any boycott against complainant's business or product, and from referring, either in print or otherwise, to complainant, its business or product, as in said "We Don't Patronize" or "Unfair" list in furtherance of any such boycott. The costs of this appeal are equally divided between appellants and appellees.

[Per Mr. Justice Roub.

March 11, 1909.]

Frank Morrison.

The committee, on the same day, further reported that Frank Morrison had been guilty of contempt in wilfully violating the terms of an injunction issued by the court in the case above mentioned in the following respects:

1. As Secretary of the Federation, he became, on or about December 31, 1907, custodian of 9,000 copies of the printed proceedings of the 1907 Convention, which set out the name of the Buck's Stove & Range Company in connection with the "We Don't Patronize List," and contained resolutions adopted by the Federation requesting each central body affiliated with it to appoint a committee to conduct and manage a campaign among the membership as well as among dealers in stoves and ranges in their locality, and thoroughly inform them as to the attitude of the President of the said company toward organized labor and report to the officers the progress of the said campaign, together with a complete list of dealers handling and selling the same, and that the commissioned organizers should report to the officers, and that he caused 6,000 copies thereof to be published and distributed throughout the United States, in violation of the injunction of December 18, 1907.

2. That on or about January 21, 1908, he joined with Samuel Gompers, John Mitchell and others in printing and widely circulating many thousands of the "Urgent Appeal," hereinbefore referred to, and causing the same to be printed in the February, 1908, *Federationist*, and in causing to be reprinted and circulated thousands of copies of the *Federationist* containing language set out on pages 175 and 176 of the Record.

3. That he also caused and assisted in causing to be reprinted and widely circulated thousands of copies of the editorial in the February, 1908, *Federationist*, containing a copy of the injunction of December 18, 1907, together with the

editorial entitled "Order Granting Injunction," discussing its effect, hereinbefore referred to.

4. That he aided and co-operated with Samuel Gompers and others in circulating and causing to be circulated, after the injunction issued by this court, many copies of the *Federationist* for January, February, March, April, June, and September, 1908, referring to the Buck's Stove & Range Company in connection with the "We don't patronize list," and made editorial and other reference to the said company in connection therewith and to the boycott declared by the Federation and the desirability of continuing and prosecuting the same against it notwithstanding the said injunction, until it should enter into an agreement satisfactory to the labor organizations.

All of said publications, statements and acts are recited to have been in wilful violation of the injunction decree of this court and done for the purpose of inducing others to disregard and violate the injunction and defeat it, and in each of the same he was guilty of contempt of court and had subjected himself to due punishment. This report is also under oath and there is attached to it the same exhibits as before.

Upon the filing of these several reports, rules to show cause were issued dated June 26, 1911 (Record, pp. 19, 146, 182), requiring the defendants to show cause why they should not be adjudged to be in contempt of the orders and decrees of the court in said equity cause. Upon the expiration of the time set in the rule, each of the respondents moved the court to set aside the report submitted, for cause alleging that the order referring the cause to the committee called for the exercise of judicial discretion and that no one of said committee was in a position to exercise the same and did not exercise it, and that every one had repeatedly, prior to his appointment, expressed in positive terms his conviction of the guilt of the respondents as to the charge which they had formulated subsequently against them, and further that the members of the

committee, while appearing on the record for the Buck's Stove & Range Company, were in fact employed and paid by the American Anti-Boycott Association and National Manufacturers' Association, and that the settlement between the Buck's Stove & Range Company and the Federation of Labor did not set these attorneys free from the legal and moral obligation to carry on the prosecution for the benefit of the associations compensating them, and that hence their action was not and could not be judicial (Record, pp. 21, 148, 185). In this connection the respondents filed (Record, pp. 22 and 23, 149, 150, 186, and 187) extracts from speeches made by several members of the committee showing their animus and prejudgment of the case. In response, Mr. Darlington and Mr. Davenport filed their affidavits (Record, pp. 27 and 29, 153, 154, 189, and 190), from which it appears Mr. Darlington received several remittances in aid of the prosecution of the Buck's Stove & Range Company case from the treasurer of the Anti-Boycott Association, although he had had no conference with any members of it or of the National Manufacturers' Association and received no instructions from it, and that his connection had terminated with the arguments before the Supreme Court at the October term, 1910, and that he was not employed to prosecute the present case by said associations. He denied bias or prejudice against the respondents and stated that Mr. Beck was out of the country. Mr. Davenport stated that he had for eight years been employed by the Anti-Boycott Association and was so employed in the Buck's Stove & Range Company suit (Record, p. 29), but that his connection with that controversy and the Anti-Boycott Association concluded with the decision in the litigation before the Supreme Court of the United States at the October, 1910, term, and that he had no interest or connection whatsoever with the pending proceedings except such as devolved upon him by his appointment; that he is not and never was counsel for the National Manufacturers' Association, and that he had no hostile bias or prejudice against the respondents.

Thereupon (Record, pp. 66, 167, 202), the motion to dismiss was overruled and an exception noted.

On July 17, in the case of each of the several defendants, there was filed a motion to dismiss upon the ground that the order of injunction alleged to have been violated was not made by Justice Wright, before whom the proceeding was brought, and that when the order was made he was not a member of the bench of the Supreme Court of the District making it, and not a member of it on the date of the motion, and had no jurisdiction or authority to preside over the proceedings (Record, pp. 26, 146, 183). The motion was further based upon the proposition that there was nothing pending at the time in the equity cause to be certified. The motion was overruled and an exception noted (Record, pp. 66, 163, 201).

For answer to the charges against him Mr. Gompers filed the following:

"Samuel Gompers, for answer to the charges against him, says:

"1. That he is not guilty of them or any of them.

"2. That the matters and things complained of in paragraphs 1 to 10, inclusive, and in each of said paragraphs, did not occur within 3 years before the bringing of this action.

"3. That the matters and things complained of in paragraphs 1 to 4, inclusive, and in each of them, occurred, if at all, as the court well knew, more than 3 years before the commencement of this action, and that any complaint with relation thereto is barred because of laches on the part of the court or judges assumed or alleged to have been affected thereby.

"4. That the delay in the presentation of the charges in this action has been so unreasonable that this respondent should not be called upon to answer them."

Mr. Mitchell filed a like answer (Record, p. 160), as did Mr. Morrison (Record, p. 197).

To the answers referred to no formal replications were filed, whereupon the several defendants (Record, pp. 40, 161, 198) filed motions to dismiss upon the following grounds:

"1. There has been no proper replication filed to the plea of the statute of limitations presented by him, it appearing upon the face of the said information and charges that many of the actions complained of therein, occurred more than 3 years before the filing of said information and charges.

"2. No pleading has been filed herein offering any justification or excuse for the laches in bringing this proceeding on the part of the court assumed or alleged to have been treated with contempt by the actions with which respondent is charged, in the aforesaid information and charges, as set forth in this respondent's answer filed herein.

"3. No pleading of any kind has been filed to account for the unreasonable delay in the institution of these proceedings, as alleged in this respondent's answer filed herein."

This motion was overruled (Record, pp. 40, 161, 198), and at the same time an opinion was rendered by Mr. Justice Wright (Record, pp. 41-62), in which is largely discussed the question as to whether the respondents had been charged with crime and were the subjects of a criminal information, and whether the statute of limitations applied to offenses of the nature of those charged.

At the same time, the cause was referred to Albert Harper, United States commissioner, to take testimony, and a time limit placed thereon, to the making of which orders (Record, pp. 63, 152, 199) respondents excepted. Thereafter the taking of testimony was proceeded with in open court, a large number of witnesses being examined and many printed exhibits being presented. The objections to the evidence based upon the lapse of three years were at all times insisted upon. The original order alleged to have been

violated was produced, as well as, over the objection of respondents' counsel, the order of March 23, 1908. No evidence whatsoever was produced showing the existence of any unlawful boycott after the going into effect of the order of December 18, 1907, except the passage of a resolution of the United Mine Workers of America on January 25, 1908, which reads as follows:

"Whereas, The Buck's Stove and Range Company, of St. Louis, Mo., have taken legal steps to prevent organized labor in general, and the officers and executive committee of the A. F. of L. in particular, from advertising the above-named firm as being on the 'Unfair' or 'We Don't Patronize' list, and

"Whereas, By the issue of such an injunction or restraining order as prayed for by the above-named firm, organized labor will be deprived of one of its most effective weapons, and

"Whereas, J. W. Van Cleave, the president of above-named firm, also president of the National Manufacturers' Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"*Resolved*, That the U. M. W. of A., in Nineteenth Annual Convention assembled, place the Buck's stoves and ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above make be fined \$5.00, and failing to pay the same be expelled from the organization."

It did not appear from the testimony that any steps whatsoever had been taken after the passage of this resolution to put it into effect.

Among the evidence adduced was the statement of Mr. Gompers in the April, 1909, *Federationist*, reading as follows:

"A Self-inflicted Boycott."

"If ever there was a self-inflicted and personally conducted boycott, it has been that engineered by the Van Cleave Buck's Stove & Range Company against

itself. Its hostile, sensational and unjust attacks upon the men of labor and their organizations have supplied the material for keeping the boycott fresh in the minds of all purchasers. It has been the action of the Buck's Stove & Range Company itself, far more than anything labor has done, which has made this the most spectacular boycott of our time.

"While the Buck's Stove & Range Company was published on the 'We Don't Patronize' list of the *American Federationist*, along with a number of firms whose relations with organized labor were unfair, yet this firm attracted no more attention than many of the others until Mr. Van Cleave, through his man Brandenburg and the Pinkerton and Turner detective agencies began a crusade of character assassination against the men who had devoted their lives to securing the rights and liberties of their fellow-men. Mr. Van Cleave, being president of the Buck's Stove & Range Company, and also president of the National Manufacturers' Association, all his hostile acts took on an intensified meaning to the men of labor. The real activity in the boycott began when an application for an injunction against the American Federation of Labor to restrain it from boycotting this firm followed the personal attacks upon the men of labor. Then, indeed, the union men and their friends from the Atlantic to the Pacific sat up and took notice and remembered the unfair standing of this firm when they were buying goods.

"When the temporary injunction was issued prohibiting the exercise of the right of free press and free speech and the daily press rang with statements of the case in relation to the Buck's Stove & Range Company, then indeed did many people who had not been concerned with the attitude of labor in any other boycott conclude that they would not purchase such goods. Then there was the making permanent of the temporary injunction, and the appeals for funds by the American Federation of Labor with which to carry the case to higher courts. There was the president's report to the conventions, the actions of two conventions—all despite the clause of the original injunction prohibiting the exercise of free press

or free speech in relation to the Buck's Stove and Range Company. It was these things which kept the boycott fresh in the minds of the workers and their friends and aroused the most intense interest. Every hostile move of the Van Cleave Buck's Stove and Range Company, every action leading to greater publicity of the case increased the boycott. It must be remembered too, that the injunction did not and does not apply beyond the District of Columbia.

"The labor press of the country and the official journals of the various trades felt entirely free to publish the non-union and hostile status of the Van Cleave Buck's Stove and Range Company and to comment freely upon the original injunction and contempt proceedings. The institution and prosecution of the proceedings for contempt of the injunction and the sentence of Gompers, Morrison, and Mitchell to imprisonment for contempt made every union man and every patriotic citizen realize that while constitutional rights are greater than property rights a strong effort was being made to establish the contrary. By a perfectly understandable mental process all these happenings kept before the public the fact that labor had a formal boycott against the Buck's Stove and Range Company, hence we repeat the Buck's Stove and Range Company has been the most potent agent in fastening upon itself a boycott—primary, secondary and possibly everlasting—because it has assumed that the courts of the land would bolster up its every attack upon the workers, regardless of how far it invaded the inherent and constitutionally guaranteed rights of the people."

It will be noted that the foregoing was introduced improperly as rebuttal, that it is not charged in the committee's reports, and that it is not the admission of any unlawful act on the part of any of the respondents, but at the most a statement of belief as to the probable effect of certain things referred to, given long after the occurrences of the events mentioned.

Knowledge on the part of the respondents of the existence of any unlawful boycott against the Buck's Stove & Range

Company during the period described in this report was at all times and in every phase denied and no evidence adduced to overcome these denials.

At the conclusion of the giving of the evidence, respondents' counsel (Record, p. 746) moved to quash the proceedings because they were in equity and there was no equity court having any power to conduct proceedings of this sort, they being criminal, which motion was overruled by the court, and an exception noted.

Thereafter (Record, p. 70), Mr. Justice Wright delivered his opinion, finding the respondent Samuel Gompers guilty of willfully violating the terms of the injunctions and sentencing him to jail for twelve months (Record, p. 141); finding the respondent Morrison also guilty of violating the terms of the injunctions and sentencing him to jail for six months (Record, p. 204), and finding the respondent John Mitchell guilty of contempt in violating the terms of the injunction of December 18, 1907 (Record, p. 169), and sentencing him to jail for nine months.

From the decrees above enumerated an appeal was taken to the Court of Appeals, and upon its hearing, the court divided, Justice Van Orsdel delivering the opinion of himself and Justice Robb, and Chief Justice Shepard dissenting. The majority opinion sustained the conclusion of the court below that the several respondents had been guilty of the various acts of contempt charged against them, and sustained its action in overruling in the several respects in which it had been offered the defense of the statute of limitations, holding that such defense was only good as against a prosecution by indictment or criminal information, and that the information filed in this case, not being prosecuted by the ordinary prosecuting officers of the Government, was not to be considered as criminal. The majority thereupon, considering further that there had been an abuse of judicial discretion in the degree of punishment awarded the defendants, directed that the judgment below

be reversed and the cause remanded with instructions to the court below to enter orders in proper form, adjudging the respondents respectively guilty of contempt of court, and imposing a sentence upon Gompers of imprisonment of thirty days, and upon Mitchell and Morrison each a fine in the sum of \$500.00.

It seems advantageous at this time to indicate the history of the prior actions. The original suit for injunction, because of alleged boycott, entitled "*Buck's Stove & Range Company vs. American Federation of Labor*, equity, 27,305," was filed in the Supreme Court of the District of Columbia August 19, 1907. The preliminary restraining order was granted by Mr. Justice Gould December 18, 1907, and went into effect December 23, 1907. The final decree in said cause was signed and went into effect March 23, 1908. An appeal was taken to the Court of Appeals and was heard in due course and decided on the 11th day of March, 1909 (33 App. D. C., p. 83), that court materially modifying and restricting the operations of the decrees below. Cross-appeals were taken to the Supreme Court of the United States, and pending their hearing an adjustment was had between the parties, so that when these appeals came on to be heard the Supreme Court, on the 20th day of February, 1911 (219 U. S., 581), refused to disturb the decree of the Court of Appeals, leaving the parties where it found them.

The original proceedings in contempt, entitled in the same cause, were instituted by a petition filed in the Supreme Court of the District of Columbia on July 20, 1908. These proceeded to a decree, dated December 23, 1908, adjudging the several respondents guilty of contempt and inflicting the like penalty as adjudged in the pending proceedings. From this judgment or decree an appeal was taken to the Court of Appeals, which, considering that the case should have come before it by bill of exceptions, declined to examine the record of testimony and affirmed the judgment or decree

of Mr. Justice Wright on the 2d day of November, 1909 (33 App. D. C., 516). Thereupon a petition for a writ of certiorari was filed in the Supreme Court of the United States and granted December 6, 1909 (215 U. S., 605), and after hearing, the Supreme Court of the United States, on May 15, 1911 (221 U. S., 418), set aside the decree of Mr. Justice Wright, finding that the contempt, if any, which had been committed was civil, and that the punishment inflicted had been that appropriate to criminal contempt, remanding the case to the Supreme Court of the District of Columbia, with direction that the contempt proceedings instituted be dismissed—

"but without prejudice to the power and right of the Supreme Court of the District of Columbia to punish, by a proper proceeding, contempt, if any, committed against it."

Specifications of Error.

In the presentation of the petition for certiorari and in this brief, we rely upon the following assignments of error committed by the Court of Appeals in its conclusions of fact and law:

1. The said court did not pass expressly upon error assigned in the proceedings below, wherein that court overruled motion to quash the same upon the ground that they were criminal in their nature, these proceedings being brought in equity.

2. It did not expressly pass upon the error committed by the court below in overruling the motion to set aside the report submitted by the committee.

3. It did not pass upon the error committed by the court below in refusing to strike out the names of the committee

and substitute the name of the attorney of the United States for the District of Columbia, the committee having been biased by reason of their employment as attorneys for the plaintiff in the suit of the Buck's Stove and Range Company *vs.* Samuel Gompers *et al.*

4. The majority of the Court of Appeals erred in sustaining the court below in refusing to dismiss these proceedings, no proper replication having been filed to the plea of the statute of limitations.

5. The majority of the Court of Appeals erred in sustaining the court below in overruling the plea of the statute of limitations herein.

6. The majority of the Court of Appeals erred in finding that there was any evidence tending to hold any respondent guilty of the charges made against him, or of any of them.

7. The majority of the Court of Appeals erred in holding this respondent guilty of violations of the injunction of March 23, 1908, no violation thereof having been charged.

8. The Court of Appeals erred in finding that any unlawful boycott existed or that any act in furtherance of a boycott was indulged in by any respondent after December 23, 1907.

9. The majority of the Court of Appeals erred in not finding that any charges against any respondent were barred by the statute of limitations.

10. The majority of the Court of Appeals erred in finding the respondents guilty of the charges against them, and also in so doing relying on matters not in evidence and on charges not sustained.

11. The majority of the Court of Appeals erred in inflicting a criminal punishment when sitting otherwise as a court of equity.

12. That these respondents by their appearance and answers purged themselves of any possible charge of contempt, but that nevertheless the Court of Appeals erred in holding them guilty thereof.

ARGUMENT.

Theory as to Real Nature and Effect of Charges.

7. THE MAJORITY OF THE COURT OF APPEALS ERRED IN HOLDING THIS RESPONDENT GUILTY OF VIOLATIONS OF THE INJUNCTION OF MARCH 23, 1908, NO VIOLATION THEREOF HAVING BEEN CHARGED.

Before discussing any of the specifications of error in detail, except the above, some general observations should be made with regard to our theory as to the real nature and effect of the charges made against the respondents. These proceedings were first entitled in equity cause No. 27305, Buck's Stove and Range Company *vs.* American Federation of Labor, and were commenced on May 16, 1911. The preceding day an opinion had been given in the Supreme Court of the United States, in the equity cause recited, ordering dismissed a prior contempt proceeding without prejudice to the power and right of the Supreme Court to punish by a proper proceeding the contempt, if any, committed against it. On the date in question, however, there was nothing pending in the Supreme Court of the District of Columbia in the original case. There had been a settlement had between the parties to that suit, and because of such fact the Supreme Court of the United States had refused to take any cognizance of it, but left the parties in the position in which it found them. Properly considered, therefore, on the date in question there was nothing whatsoever before the court. Nevertheless, Mr. Justice Gould, sitting in equity, of his own motion, referred to Mr. Justice Wright, at that time sitting in another court, "all matters pertaining to an alleged violation by certain defendants herein of the injunction order theretofore issued," etc. The authority for such certification does not appear in the rules, and the only statutory provision

covering the matter is in section 67 of the District Code, which has no relation whatever to such a case as the present, there having been no cause, in the sense of a pending action, waiting to be heard or tried, and which could be certified. The section reads as follows:

"By mutual consent and arrangement between justices, civil causes may be certified by any justice holding a circuit court to any justice holding a criminal court for trial in the latter; and, by similar arrangement, *any cause* may be certified by any justice to another justice, *to be heard or tried* by the latter, except that a criminal case can only be *certified for trial* from one criminal court to another criminal court. In the absence of any justice assigned to a special term, such special term may be presided over and its business conducted by any other justice."

Immediately upon the reference being made to Mr. Justice Wright, he passed an order in a newly entitled cause in the Supreme Court of the District of Columbia, denominated equity, 30180, in the matter of Samuel Gompers, John Mitchell, and Frank Morrison, which recited that

"It appearing to the court that there is reason to believe that Samuel Gompers, John Mitchell, and Frank Morrison are guilty of contempt of the Supreme Court of the District of Columbia, in wilfully violating the terms of an order of injunction issued by the court on or about the 18th day of December, A. D. 1907, in the cause numbered equity, 27305, and entitled The Buck's Stove and Range Co., plaintiff, *versus* the American Federation of Labor, Samuel Gompers *et al.*, defendants, it is ordered: That J. J. Darlington, Daniel Davenport, and James M. Beck, Esqs., be and they are hereby appointed, authorized, and empowered to inquire whether there is reasonable cause to believe the said persons guilty as aforesaid. And, if yea, they are hereby empowered and directed forthwith to prepare, file, present, and prosecute against the persons hereinbefore first named charges of contempt of court; to the end that the authority of the court be established, vindicated, and sustained."

It will be noted so far that there was nothing pending before the Supreme Court of the District of Columbia in equity, 27305, relating to any alleged contempt at the time the order of certification was made, and it will further appear that a new caption entirely was used, being an equity caption, with a recital that "it appearing to the court, etc.," when in point of fact in equity cause 30180 there was absolutely nothing of any kind whatsoever before the court upon which such recital could, by any legal possibility, be based. The order, therefore, was, legally speaking, the voluntary and unsupported act of the court, without any foundation in the cause in which it was made.

With this introduction, let us consider the exact terms of the order itself in its relation to the succeeding pleadings. It will be noted that the thing said to have appeared to the court, and which the committee was authorized to inquire into, was whether there was reasonable cause to believe the respondents guilty of contempt in wilfully violating the terms of an order of injunction issued by the court on or about December 18, 1907,¹⁵ in equity cause 27305. Their authority, therefore, was limited to one particular thing—the determination of the violation of the preliminary restraining order. There is reason to believe that this is exactly what the committee understood its functions to be. When it reported to the court, as it did on June 20th, it recited the direction by the court's order of May 10th, to inquire whether the several respondents had been guilty of contempt in wilfully violating the terms of an injunction issued by the court in equity, 27305, and it reported that there was reasonable ground to believe that the several respondents were guilty "as aforesaid."¹⁶ It appears from the report of the committee that an injunction *pendente lite* was granted on December 18, 1907, which became operative on December 23d of the same year. A copy of this injunction is attached to the several reports. There is a recital that it was followed by a final decree passed March 23, 1908.

restraining and enjoining the defendants from doing any of the things prohibited by the decree of December 18, 1907, and a copy is attached, by reference to which it will be discovered that the decree of March 23, 1908, was an absolutely new decree, not in any way continuing or extending or making perpetual the original decree *pendente lite*, and not confirming it, but terminating it by its own terms, because by them it only existed "until the final decree."

A later reference in the committee's report to the final decree described its view of the condition (Record, p. 10) when it spoke of the issuance of the *American Federationist* "after the final decree of this court in the said equity cause, in effect making perpetual the injunction *pendente lite*," the committee carefully abstaining from the statement of more than their legal conclusion, resultant upon the fact that when one decree terminated another decree began.

That the powers of the committee were limited to a determination as to whether there had been violations of the preliminary injunction, and that the committee so understood them to be limited, is further manifest from the very careful wording of the conclusions of the several reports, as for instance (p. 14), in the case of Samuel Gompers it being said that his publications, etc., were in wilful violation of the injunction *decreed* and for the purpose of inducing others to disregard and violate the *injunction* of this court, and thereby to defeat it.

It is true that after the coming in of the report Mr. Justice Wright signed a rule which called upon the respondents to show cause why they were not guilty of contempt in wilfully violating the terms of the *injunctions* issued in the Buck's Stove & Range Company case, and why they should not be adjudged to be in contempt of the *orders and decrees*, and be punished therefor.

The above recital will show that until the issuance of the rule to show cause, there was no suggestion that the respondents were charged with anything except a violation of

the preliminary injunction, and the importance of this situation will appear from the following considerations.

The injunction order of December 18, 1907, expired by its terms upon the making of the final order. The final order was made on March 23, 1908. The committee's report was filed on June 26, 1911, 3 years and 3 months after the expiration of the decree alleged to have been violated. If, therefore, the respondents' contention, subsequently to be discussed, that a 3 years' period of limitation barred acts of contempt, be correct, and the original order expired March 23, 1908, every act legally complainable of in the committee's report was barred of punishment 3 months and 3 days before the report was made to the court.

Even if the respondents' contention relative to the proper interpretation to be given to the committee's report be incorrect, yet if their general position with regard to the statute of limitations is sound, nearly every act recited in the committee's reports was barred, because there is little complaint made in such reports of acts occurring within 3 years of June 26, 1911.

It may be suggested that it is immaterial that the committee reported only relative to violations of the preliminary injunction, because the court had a perfect right to act of its own volition, believing the offense of contempt to have been committed and could direct rules to show cause without affidavit, complaint, or information relative to violations of the final order. This, however, in our opinion, would be clearly and absolutely erroneous. It is impossible so far as our studies have extended, and in our belief, to find any case whatsoever in the books where an indirect contempt committed beyond the presence of the court, and which the court may only have knowledge of through another, where prosecution has been had or allowed, except upon affidavit or sworn complaint or information. This has been the course taken in every case which will be cited in this brief, and is the only course recognized as permissible by the direct lan-

guage of all authorities, many of which are cited under later headings.

The deductions from the foregoing may be summed up as follows:

1. The equity court having nothing before it at the time of the certification, the principal case having gone by appeal in regular course to the Supreme Court of the United States, and the contempt case being before the Supreme Court of the United States on certiorari, there was nothing whatever to be certified to Mr. Justice Wright. An intangible criminal contempt was incapable of certification. It could not appear to Mr. Justice Wright, as there was nothing before him, that any contempt had been committed, and furthermore, the recital that it did so appear was made in an equity cause of an entirely new number, in which there were no entries whatsoever.

2. The direction of Mr. Justice Wright to the committee had relation to no act of contempt except such as might have been alleged to have been committed against the provisions of the order of December 18, 1907.

3. The report of the committee had relation only (because the committee's functions were limited and were so understood by it) to violations of the order of December 18, 1907.

4. The rules to show cause, signed by Mr. Justice Wright, if intended to be based upon supposed violations of the decree of March 23, 1908, were void to that extent as having no foundation in evidence before the court, or any affidavits or sworn information or petition, the report relating only to the decree of December 18, 1907.

As a result of the foregoing, it must follow either—

(a.) That the rule to show cause was without any founda

tion whatever to justify its issuance, and therefore the whole proceeding is void, or

(b.) That assuming that the acts complained of are fairly the subject of contempt proceeding, they are to be regarded as barred, because based upon an order expiring 3 years and 3 months before their institution, and being controlled by the statute of limitations, as we shall hereafter show.

I.

4. THE MAJORITY OF THE COURT OF APPEALS ERRED IN SUSTAINING THE COURT BELOW IN REFUSING TO DISMISS THESE PROCEEDINGS, NO PROPER REPLICATION HAVING BEEN FILED TO THE PLEA OF THE STATUTE OF LIMITATIONS.

5. THE MAJORITY OF THE COURT OF APPEALS ERRED IN SUSTAINING THE COURT BELOW IN OVERRULING THE PLEA OF THE STATUTE OF LIMITATIONS HEREIN.

9. THE MAJORITY OF THE COURT OF APPEALS ERRED IN NOT FINDING THAT ANY CHARGES AGAINST ANY RESPONDENT WERE BARRED BY THE STATUTE OF LIMITATIONS.

These specifications of error, above-quoted, all have relation to the defense of the statute of limitations, a defense which was at every moment of the proceedings insisted upon and brought to the attention of the court in every possible way, down to the moment of its decision. It was overruled by the opinion of the court (Record, p. 41) and disregarded and overruled whenever presented at a later period in the case, and overruled by a majority of the Court of Appeals. Nevertheless, we submit in all confidence that the defense was absolutely good, and that it should have prevailed.

Statutory Provisions.

There are two statutory provisions of importance in considering this matter, the first being section 1044 of the Revised Statutes, providing a period of limitation applicable in this case, which reads as follows:

"No person shall be prosecuted, tried or punished for any offense, not capital, except as provided in section one thousand and forty-six, unless the indictment is found or the information is instituted within three years next after such offense shall have been committed. But this act shall not have effect to authorize the prosecution, trial or punishment of any offense, barred by the provisions of existing laws."

The second provision is section 725 of the Revised Statutes, relating to contempts, reading as follows:

"The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine, or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree or command of the said courts."

What is the Essence of Contempt?

Impressed, perhaps, by the names of great judges in the past, authors and, in some instances, courts have found it easier to accept without critical consideration what has been said in the books with regard to contempt than to make

an independent examination. As a result of this, we find a confusion, not even recognized by those indulging in it, in the books and courts with relation to the nature and character of contempts. It is this confusion which accounts for contempt of court being called in a haphazard way "penal," "quasi criminal," "criminal in its nature," etc. To our minds contempt of court may present features more widely different, by way of illustration, than assault and fraud.

The simplest form of so-called contempt of court is where one disturbs the judge in the court-room, threatens or assaults a witness, attacks a jurymen, etc. Here we have an obstruction to the course of justice which we may class as purely criminal and which is denominated direct contempt. The real cause for punishment is not want of respect for the judicial officer, who may not at all have been in the mind of the offender, but the fact that the thing done is an obstruction to justice and, therefore, a crime. It may be punished by the ordinary course of the criminal law, and this was the only way in which it was punished originally. According to later practice, it may be punished by very summary proceedings if occurring within the sight of the justice, or by a less summary method through rule to show cause, etc., if not within his personal knowledge and sight.

We have next a failure or refusal on the part of a defendant to meet the requirements of the court's decree. This is illustrated by the case where the defendant has been ordered to execute a deed or pay alimony and fails or refuses to do so. In this case the action of contempt is in the nature of an execution and exactly analogous to imprisonment for debt after judgment at law, where the defendant was regarded as contumacious but able to relieve himself of the consequence of his contumacy by paying the money adjudged to be due by him. This process of contempt is as purely civil therefore as an ordinary *fi. fa.* and contains no element of criminality.

Those who actively disobey the injunction of the court are held to be in constructive or indirect contempt, and are subject to punishment at common law as committing a crime, and always have been so subject. They are not in point of fact so subject because they have been disrespectful to the court, but because, as in the first instance, they are obstructing the course of justice and in this respect violating the orderly course of government. This variety of contempt originally was the subject of trial by jury, and in later times was seized upon by the court of Star Chamber as coming within its jurisdiction, being contemptuous of the King, because contrary to commands under his seal, but all the time being a crime, as is shown in this brief. It is only within the past hundred years that courts of chancery by summary proceeding have undertaken to punish those who came under this third classification. Their criminal correction by proceedings in chancery is not necessary to the ends of justice, because an indictment would equally well serve the purpose, and in many instances might be more expeditious. Not being necessary and being of only recent creation, the power to adjudge such violators of the law to be in contempt of court is not inherent in a court of chancery.

We are tempted to quote at this point the language used by Mr. Storrs, a prosecutor in the trial of Judge Peck, for abuse of the powers of contempt (Peck's Trial, page 402). Referring to extensions of powers of contempt, he says:

"It is not to be made an offense on arguments drawn from necessity, unless the law has made it. Power was ever silently stealing its way along that path. It was first necessary—then inherent—then implied—then expedient—then adopted—then demonstrated as precedent, as well as principle,—and finally established, defended, and learnedly and eloquently vindicated."

It will be of assistance in this discussion to consider further from another point of view exactly what is contempt. In the old English law we find that contempt was construed to be a disrespect, not of the courts primarily, but to the King, as, for instance, by the creation of disturbances in the King's house at Westminster, or by insulting actions or language toward the writs bearing upon them the impress of the King's seal (*contemptum breviarum*). This idea of disrespect to the King has been through the centuries transferred into an idea of disrespect to the courts as agencies of the royal authority. Yet, if we consider the thing, contempt is nothing else than a very commonplace criminal offense which, when levelled against the judgments of the courts, has been treated in a summary manner by the courts, but which when levied against the orders of any other branch of government is not made the subject of summary proceedings.

The power of proceeding summarily in indirect contempt is one which, being entirely the creation of judges, may be abolished by the power which created it, and matters of this sort may be treated as other cases of wrongdoing—that is, referred to the ordinary Government prosecutor for his appropriate action.

Is Contempt of Court a Crime and Were Proceedings in This Case Criminal?

The principal questions which arise upon the interpretation of the statutory provisions are

1. Whether contempt of court is a crime within their meaning, and
2. Whether contempt of court is such an offense as is indictable or the subject of a criminal information, and, in point of fact, whether in point of form or not, are the proceedings had in this case criminal?

(It was the contention of the lower courts that contempt of court, spoken of often as being "criminal in its nature" or "*quasi*-criminal" or "penal," is not in fact criminal.

We may properly begin the discussion of these propositions by examining into the history of the action of contempt from its earliest beginnings, and in doing this work, we shall find ourselves materially aided by the careful review of the earliest year books made by Mr. Solly Flood in the Transactions of the Royal Historical Society, new series, volume 3, 1886, and by Mr. James Charles Fox in an article in the *Law Quarterly Review* for 1908, under the title of *King vs. Almon*. We subjoin an extract* from the

* "See the history of the writ of habeas corpus by the present writer (Solly Flood), title 'Contempt,' in which are transcripts or extracts of records of all the known cases of contempt, except those mentioned in the year books, which came before the court of King's bench from the time of Magna Charta to the death of Henry V. and all the reports of those mentioned in the year books, but not one of which was dealt with otherwise than according to the course of common law, *i. e.*, by action, information, presentment, or indictment. The following schedule contains a brief summary of them.

Roll.	Name of plaintiff.	Name of defendant.	Precis of record.
M. 37, 38 Hen. III, m. 7.	Rex et W. Bertolf.	Will Kyme,	Action for inciting a mob of 200 persons to burn plaintiff, because he sued defendant in King's Court, and for beating the jury.
M. 37, 38 Hen. III, m. 12d.	Rex et Joh. de Faulkn.	Will de Insula,	Action for assault in the presence of judge while sitting in court.
M. 38, 39 Hen. III, 25d.	Rex	Laurentius,	Action for contempt and hindering proceedings in court.
P. 21, Ed. I, par. 1, m. 55.	Rex et William de Bereford.	Eustace de Parle and Joh. de Parle.	Information by petition of judge to Parliament against defendants for insulting him in court.
P. 22, Ed. I, m. 39.	Joh. de Moienstin and others, jurors in action of homage <i>v.</i> Desfont.	Hug and Portam, ...	Action by the jury in a cause for abusing them in open court; a jury to try the issue impanelled <i>instantur</i> .
P. 30, Ed. I, m. 9d.	Rex et Simon de Benham.	Egid de Argentum, ...	Action for assaulting the plaintiff in open court.

work of the first named, showing that without exception from the time of Magna Charta to the death of Henry V every single case of contempt was dealt with alone by action, information, presentment, or indictment, and that in not one of them was it thought by the courts necessary that there should be a summary proceeding, without a trial by jury. Let us call attention to some of the most striking cases,

Roll.	Name of plaintiff	Name of defendant	Précis of record
M. 43, Ed. I, m. 75.	Roger de Hengham.	Will de Brewe.....	Information by chief Justice for abusing him in open court while sitting to try an action.
T. 11, Ed. II, m. 48.	Will de Thorp	Thomas Mackwell et Joh frater eius	Action by one of a jury who had been sworn for assaulting him on his way to court; tried by a jury of bystanders in the court.
T. 13, Ed. II, m. 14.	Rex et Joh de Charlerton.	Heur. de la Pottie.	Action by Mayor of the Staple for abusing him in open court at Westminster; tried by a jury impanelled in a tier in Westminster Hall.
M. 17, Ed. II, m. 164.	Will de Bradeschagh, miles.	Heur. de Gillebrand.	Action for violent assault and preventing the holding court.
M. 17, Ed. II, m. 164.	Jordanus de Kenyon.	Will de Bradeschagh, mil.	Action for violent assault by an appellee upon the appellant on his way to court.
M. 17, Ed. II, m. 63.	Rex et.....	Will de Batesford.	Action for abusing in court a party to a suit.
M. 17, Ed. II, m. 69.	Joh. C. Norreys.....	Ad de Wykerstalle.	Action by one of a jury in an action for accusing him in open court of giving a false verdict.
M. 3, Ed. III, m. 128.	Joh. de Graunt sete.	Regen (in error).....	Conviction by Superior Court for contempt in open court reversed by a writ of error, because of fence not tried by a jury.
M. 6, Ed. III, m. 34.	Rex et Joh. de Rokeley.	Ad. de Everyng- ham de Rokeley.	Action for contempt <i>(de placito contumptum)</i> in assaulting plaintiff in open court.
P. 10, Ed. III, m. 59.	H. Gaygold.	W. de Batesford.....	Like action for assault on plaintiff in open court.
P. 10, Ed. III, Rex, m. 154.	<i>Juratores</i> , etc.....	Gilb. Tweye.....	Action by a jury for abusing them in open court.

We find among others that when the jury was abused in open court, a jury was impanelled to try the case. We find an information by the Chief Justice for abusing him in open court. We find even a conviction of a superior court for a contempt in open court, reversed by writ of error because the offense was not tried by jury. We find an indictment for an assault in open court, and an indictment for

Roll.	Name of plaintiff.	Name of defendant.	Præcis of record.
H. 13, Ed. III, m. 116.	John de Sandham.	T. Holebrook.	Process before Parliament (<i>coram Rege in Parlamento</i>) for tumult in court.
T. 19, Ed. III, m. 77.	Rex et Th. de Whitesley.	W. de Daryngham.	Action for violent assault in court.
H. 20, Ed. III, m. 191.	Rex.	Roger de Bondon.	Presentment by jury for contempt and assault on one of themselves in court, removed by writ of certiorari; defendant pleaded not guilty, but tried by a jury and convicted.
P. 20, Ed. III, m. 61.	Rex et Th. Hubert.	John de Wodehouse et John <i>seignours</i> .	Action by one of a jury for violent assault in open court; verdict, damages 80 <i>l.</i> , of which 20 <i>l.</i> awarded to King.
M. 10, Ed. III, m. 113.	Rex et Simon de Kegworth.	Robt. de Shaleford.	Action for violent assault on the Attorney-General in open court.
E. 1, Hen. V, Rex, m. 15.	Rex.	John Shaw.	Bill for attempting to rescue a prisoner from the interior bar of the court and abusing the marshals. Jury of officers of the court ordered and challenged. Challenge allowed. Fresh jury impanelled. Defendant found guilty of part contempt, acquitted of remainder.
E. 9, Hen. V, Rex, m. 7.	Rex.	Richard Cheddre.	Presentment by jury for violent abuse of them while considering their verdict; removed by certiorari. Defendant arraigned, pleaded guilty, and prayed to be admitted to make an end with the King.

N. B.—The said Richard Cheddre afterwards offered the crown, *sponte et non coactus*, voluntarily to pay 300 marks, in three installments, which sum was accepted by the council, and assigned by them to the Duke of Bedford, the King's brother, in part payment of his wages. The judges were then ordered, by writ of privy seal, to record the amount of all forfeitures on payment. See Acts of Council, H. 28, 30, and 32.

striking in Westminster Hall a juror who had given a verdict against the defendant.

It seems, therefore, that for hundreds of years summary proceedings were unknown even for contempts in open court, which offense was so far criminal as to be prosecuted by all criminal methods, and a trial by jury absolutely requisite.

Taking up the article referred to by Mr. Fox, we discover that he denies with weight of authority the opinion prepared but, as it happened, never delivered by Justice Wilmot, in which that justice maintained

"That the power which the courts in Westminster Hall have of vindicating their own authority is coeval with their first foundation and institution. It is a

To the foregoing are to be added as reported.

Year book.	Name of plaintiff.	Name of defendant.	Précis of record.
M. 22, Ed. III, l. 29.	Rex	Anon Chiv. of Anon, Req.	Indicted for an assault in open court in the presence of Thorpe, Justice.
27 Ed. III, l. 3b. Ass. pl. 49.	Rex et anon (a priest)	Anon	Action for trespass in the presence of the King (<i>Georum Regem</i> and his Justices) i. e., in the court of King's Bench.
29 Ed. III, l. 3b. Ass. pl. 14.	Rex et anon	Anon	Action for assault on person coming to court to prosecute an action.
31 Ed. III, l. 3b. Ass. pl. 1.	Rex et Ad. Bradson et Em. his wife	Ex. R. W.	Action for assault on female plaintiff coming to court to prosecute an assize of novel disseisin.
42 Ed. III, l. 3b. Ass. pl. 18.	Rex et Sibylla, widow of John Dring.	Patrick de Sandal.	Action for assault in Westminster on a widow while prosecuting an appeal against defendant for the death of her husband; tried by a jury of stall-keepers in Westminster Hall, impanelled in-stanter.
42 Ed. III, l. 2, pl. 17.	Rex	Anon	Indicted for striking in Westminster Hall a juror who had given a verdict against defendant.

necessary incident to every court of justice, whether of record or not, to fine and imprison for a contempt of the court, acted in the face of it; and the issuance of judgments by the Supreme Court of Justice in Westminster Hall for contempts out of court, stands upon the same immemorial usage as supports the whole fabric of the common law; which is as much the *lex terra*, and within the exception of Magna Charta as the issuing of any other like process whatever."

In this connection it is to be borne in mind that the opinion of Mr. Justice Wilmot sustains the issuance of attachments for libels committed against judges concerning their conduct as to cases they have decided, a doctrine attempted to be vindicated by Mr. Justice Peck in this country in the early part of the last century, and which nearly cost him his judicial seat, and brought about the statutory limitation upon the exercise of contempt powers by Federal judges.

Mr. Fox mentions (page 197) as sustaining the doctrine before referred to, illustrated by Mr. Solly Flood, that in contempt proceedings the defendant was entitled to trial by jury, a number of cases, one in the time of 21st Edw. I, where an attachment was brought on the King's behalf against one W., who was charged with trampling a prohibition under his feet, and upon his denying the contempt, the question being tried by jury, also another case in 3 Edw. II, where a man receiving a writ of prohibition and throwing it on the ground was found in contempt by a jury.

Coming further down, we will mention the case of Thomas Wilbraham, who petitioned against the justice of the King's bench "that they had not done according to law and reason," for which he was indicted, convicted, fined, and ransomed in the King's bench. And a further case is of one Humney, who having complained to King Edward III that Sir William Scott, Chief Justice, had awarded an assize contrary to law, the King sent it to the judges; whereupon he

was imprisoned, judged, fined, and ransomed. The last two cases were cited by Sir Edward Coke (Howell's State Trials, volume 2, p. 1074), case of Wraynham.

In the case of Nicholas Fuller (12 Reports, 41; year 1609) we find the following:

"These points were resolved upon conference had with all the justices and barons of the exchequer.
* * *

"4. It was resolved that if a counsellor at law in his argument, shall scandal the King or his government, temporal or ecclesiastical, this is a misdemeanor, and contempt to the court; for this he is to be indicted, fined and imprisoned, and not in court Christian."

In the case of Richard Radley (7 Howell's State Trials, 702), this being a case of scandal against Chief Justice Scroggs, because of his judgment in a case, the defendant was ordered proceeded against by information and was convicted and fined.

We find in a note to Dyer's Reports, page 188*b*, the following:

"Richardson, Chief Justice of C. B., at the assize of Salisbury, in the summer of 1611, was assaulted by a prisoner condemned there for felony, who after his condemnation, threw a brickbat at the said judge, which narrowly missed; and for this an indictment was immediately drawn by Noy against the prisoner, and his right hand cut off and fixed to the gibbet, upon which he was himself immediately hanged in the presence of the court."

In the case to which this is a note Davis struck a witness and threatened him if he gave evidence, this in Westminster Hall, all the King's courts sitting, and he was indicted and convicted.

In Harrison's case, Cro. Car. 503, the defendant was indicted for having, when the court was sitting, accused Judge Hutton of high treason. He was convicted by jury, and, as

part of his penalty, compelled to acknowledge his wrong to all the courts sitting in Westminster.

It is a matter of note that Mr. Fox does not find apparently that a court of chancery ever exercised, in its early history, power to proceed summarily in cases of contempt, but that, whenever its orders had been violated, regular criminal proceedings were had against the offender in the court of Star Chamber until that court was abolished in 1641, and thereafter, by the provisions of the act abolishing it, the powers exercised by it, so far as they were legally exercisable, were vested in the remaining courts.

The limitations upon the right of the court of chancery to undertake to treat punitively contempts of its orders is further discussed in an article in the *Harvard Law Review* of January, 1908, by Prof. J. H. Beale, Jr., from which we extract the following:

(Page 169:)

"This difference in nature between the contempt of the King's seal on a writ and active contempt of the court appears also in the method by which the court deals with the contempt. Active contempt of the court, like similar contempt of the King, is a crime, and indeed may be indicted and punished as a misdemeanor. It is usually dealt with summarily by the court, which causes the immediate arrest of the offender and sentences him to a fine or imprisonment as a punishment for his wrong-doing. Quite otherwise is the action of the court where its injunction or other order or decree is violated by the person to whom it is addressed. In such case the violation is called to the attention of the court by the injured party, and if the violation is proved the wrong-doer is committed to prison to remain until he purges himself of his contempt by doing the right or undoing the wrong. As early as the time of Richard III it was said that the chancellor of England compels a party against whom an order is issued by imprisonment; and a little later it was said in the chancery that 'a decree does not bind the right, but only binds

the person to obedience, so that if the party will not obey, then the chancellor may commit him to prison till he obey, and that is all the chancellor can do.' This imprisonment was by no means a punishment, but was merely to secure obedience to the writ of the King. Down to within a century it was very doubtful if the chancellor could under any circumstances inflict punishment for disobedience of a decree. * * *

"It thus appears that imprisonment for contempt of the chancellor's decree, or rather for contempt of the King's writ issued in execution of such decree, was not punitive but coercive; and that anything in the nature of a sentence to a definite punishment, like a fine or an imprisonment for a term, was entirely foreign to the process."

It would seem clear historically, therefore, that direct or indirect contempt is a criminal offense, first dealt with by jury, but its nature in no sense changed because of the fact that in later years courts undertook to deal with it by summary process. That it is still in England regarded as criminal is evidenced from the language used *In re Pollard* (5 Moore, P. C. (N. S.), 111; L. R., 2, P. C., 106), decided in 1868, wherein the court says:

"Their lordships do agree only to report to your majesty that in their judgment no person should be punished for contempt of court, which is a criminal offense, unless the specific offense against him be distinctly stated, and an opportunity of answering it given to him, and that in the present case their lordships are not satisfied that a distinct charge of the offense was stated, with an offer to hear the answer thereto before sentence was passed."

In this case the offense was an alleged contempt committed in open court.

In the English work of Oswald on Contempt, third edition, page 6, the writer declares broadly that—

"contempt of court by interfering with judges or the course of justice is a misdemeanor at common law."

In Lord Halsbury's work upon the "Laws of England," under the title "Contempt" in volume 7, page 280, summarizing the decisions of the court up to date and including many of the old cases upon which our present rules are founded, it is said:

"604. Criminal contempt is a misdemeanor punishable by fine or imprisonment, or by order to give security for good behavior. The superior courts have an inherent jurisdiction to punish criminal contempt by the summary process of attachment or committal in cases where indictment or information is not calculated to serve the ends of justice. The power to attach and commit, being arbitrary and unlimited, is to be exercised with the greatest caution, and as the application of this remedy invokes the withdrawal of the offense from the cognizance of a jury, it is only to be resorted to where the administration of justice would be hampered by the delay involved in pursuing the ordinary criminal process."

The same work, under the title "Criminal Law and Procedure," contains the following:

"398. Contempt of court is a misdemeanor at common law and punishable by fine and imprisonment without hard labor. Contempt of a court of record is also punishable summarily by committal or attachment by that court, and this is the course usually taken. But in all cases the remedy by indictment remains."

The language of American courts is substantially similar.

In *Ex parte Kearney* (7 Wheaton, 38, 43), a case of commitment for a direct contempt in refusing to answer questions in open court, the Supreme Court of the United States says:

"When a court commits a party for contempt, their adjudication is a conviction, and their commitment its consequence is execution."

In Williamson's case (26 Pa. State, 18), for making a false return on *habeas corpus*, it is said:

"It must be remembered that contempt of court is a specific criminal offense. It is punished sometimes by indictment and sometimes in a summary proceeding, as it was in this case. In either mode of trial, the adjudication against the offender is a conviction, and the commitment in consequence is execution."

In re Schull (221 Mo., 623; 133 American State Reports, 496), contempt for refusal to answer questions as a witness, it is said contempt of court is a specific criminal offense, and a fine imposed in a judgment in a criminal case. The adjudication is a conviction, and the commitment in consequence thereof is execution.

In *New Orleans vs. N. Y. Mail Steamship Company* (20 Wallace, 387) the Supreme Court says:

"Contempt of court is a specific criminal offense. The imposition of a fine was a judgment in a criminal case. This court can take cognizance of a criminal case only upon a certificate of a division in opinion."

In *Castner vs. Pocahontas Collieries Co.* (117 Fed., 184), where a regular criminal arrest for violating the statute had taken place, among numerous other authorities was cited with approval the language of Judge Blatchford in *Fischer vs. Hayes*, 6 Fed., 68, as follows:

"It is well settled that contempt of court is a specific criminal offense."

In re Ellerbe, 13 Fed., 530, where arrest for refusal to obey subpoena was sought in another district, expresses the following:

"A refusal to obey the process of a court of the United States is an attempt to obstruct the administration of justice, and is plainly an offense against the Federal Government. A proceeding in contempt in

a Federal court is a criminal case to be prosecuted in the name of the United States." * * *

"It has frequently been held to be an offense against the United States, within the terms of the provision of the Constitution which authorizes the President to pardon such offenders," citing 3 Op. Att'y's General, 622; 4 *Id.*, 317; 4 *Id.*, 458.

In *Anargyros vs. Anargyros & Company* (191 Federal, 208), a proceeding to punish for contempt was held to be a criminal action. In the case of *Flathers vs. State* (125 Pacific, 902) it was held that a person imprisoned as punishment for a criminal contempt, properly so called is imprisoned in execution under sentence for a crime.

In the case of *U. S. vs. Jacobi*, Federal Cases 15,460, wherein occurs a thorough review of this particular subject, the court said:

"I hold that section 47 (now section 725, U. S. R. S.) makes contempt of court a crime against the United States. Now that it is within section 33 (section 1014, U. S. R. S.) a crime for which the party may be arrested and imprisoned, or bailed, I do not doubt."

In *Ex parte Mullee* (Fed. Cases No. 9911) it was said by Justice Blatchford:

- "A contempt of court is an offense against the United States. In the present case there is a judgment judicially declaring the contempt and offense."

In the case of *Bullock E. & M. Co. vs. Westinghouse E. & M. Co.*, 129 Fed., 105, the court had occasion to discuss the character of contempt as a crime, and Mr. Justice Lurton, speaking for it, said:

"The willful violation of an injunction by a party to the cause is a contempt of court constituting a specific criminal offense" (many citations following). * * *

4
7

"Is it reviewable by a writ of error? A contempt proceeding is classified as a misdemeanor, and not as a felony. *In re Acker* (C. C.), 66 Fed., 291. Misdemeanors are reviewable by this court upon writ of error by virtue of the broad appellate powers conferred by the act of March 3, 1891, c. 517, 26 Stat., 826 (U. S. Comp. St., 1901, p. 547), establishing circuit courts of appeal and defining and regulating the appellate powers of United States courts. If, therefore, the imposition of the fine complained of 'was a judgment in a criminal case' as it is defined to be in *New Orleans vs. Steamship Co.*, 20 Wall., 387, 392; 22 L. Ed., 354, it was a judgment in a misdemeanor case; for contempts are universally classified as misdemeanors, and not felonies. *In re Acker* (C. C.), 66 Fed., 291. If a judgment in a misdemeanor case, it is reviewable upon writ of error by this court. This conclusion was reached by the Circuit Court of Appeals for the Second Circuit in *Gould vs. Sessions*, 67 Fed., 163; 14 C. C. A., 366."

In the *Acker* case above referred to the Federal court held that contempt of court being a misdemeanor a United States marshal might arrest the offender therefor when caught in the act.

In *Lester vs. People*, 150 Ill., 424, the court said that a criminal contempt was—

"a distinct case, criminal in its nature and may properly be docketed and carried on as such, and the judgment entered therein *will exhaust the power of the court to further punish for the same acts and contempts.*"

The case last cited we also rely upon to maintain the proposition elsewhere discussed in this brief that no criminal contempt as such should be carried on as a suit in equity.

Contempt of Court May be Pardoned by the President as a Crime.

The Attorneys General of the United States have repeatedly held that "contempt of court is an offense against the United States," within the power of the President to pardon (3 Op., 622; 4 Op., 458; 5 Op., 579; 19 Op., 476), basing their conclusion upon repeated court decisions. Among the State authorities treating contempt as subject to the pardoning power are *Shoup vs. State*, 102 Tenn., 9; 73 Am. St. Rep., 851; *State vs. Sauvinet*, 24 La. Ann., 119; 13 Am. Rep., 115; *Ex parte Stickney*, 4 S. & M. (Miss.), 751; *State vs. Van Orden*, 21 La. Ann., 119.

Writ of Error to Supreme Court Not Allowed, as Contempt is Criminal.

As a result of this review, brief as it is, and indefinitely multiplied as it might have been, we are prepared for the case of *Pierce vs. U. S.* (37 Appeals D. C., 582, 589), wherein the appellant had been adjudged guilty of a criminal contempt, and that court said:

"The case against the applicant is what has been denominated a criminal contempt. It was a proceeding at law between the United States and the defendant to vindicate the authority of one of their courts by punishing an action in contempt thereof. It is, therefore, in the nature of a criminal proceeding, and governed by the principles and procedure relating thereto, save in respect to indictment and trial by jury. *Gompers vs. Buck's Stove and Range Company*, 221 U. S., 418; 55 L. Ed., 797."

* * * * *

"We feel that it did arise under a criminal law within the meaning of that term as used in section 250."

That court, in reaching the conclusion it did in the case just cited, was supported by numerous authorities, among which we may refer to the case of *Hurley vs. Commonwealth* (188 Mass., 443), wherein under a law permitting re-examination by the Superior Court in cases of crimes, the court said:

"A sentence to punishment for a distinctively criminal contempt is a judgment in a criminal case, which may be re-examined upon a writ of error."

It will be noted, however, that in the present case the Court of Appeals has apparently reversed its holding that a criminal contempt offers nothing other than a criminal case.

Method of Trial No Criterion as Determining Whether Criminal Contempt is Crime.

It will be noted that in the opinion of Mr. Justice Wright below it was contended that contempt of court was not a criminal offense, for the reason that in the revision of the penal laws of the United States contempt of court was not specifically mentioned. Certainly there is not anything in the revision of the penal laws affirmatively indicative of the idea that no offense was to be deemed criminal unless named and embraced therein; thus we find in the *Pierce* case that a writ of error was refused on the ground that contempt of court was so far criminal that no writ of error could lie to the Supreme Court of the United States, and it is to be noted that when an application was made to the Supreme Court itself for the granting of a writ of error, that application was refused, the action of the District Court of Appeals being, therefore, in effect, affirmed.

It was further urged in the opinion of Mr. Justice Wright that the offense of contempt of court was not criminal in any constitutional sense, because a trial by jury was not provided for. The 6th Amendment of the Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

It being recognized that contempts are ordinarily dealt with at the present day summarily by the court, and without the assistance of a jury, the argument of the trial court was then that the case is not criminal because trial by jury is not provided for, and further because the respondent has no absolute right to be confronted with the witnesses against him, or informed of the nature and form of the accusation.

Without for a moment admitting that any of the other elements may be ignored, we have to reply that the right or want of right to trial by jury does not in any degree determine the nature of the offense as to its being civil or criminal, and further that no well considered case, if, indeed, any case, of indirect contempt, such as that before the court, may be found in which the respondent has not had and been secured the benefit of a written (and sworn) accusation against him and the opportunity of confronting the witnesses charging him with the crime.

Let us discuss the question of the presence or absence of a jury as indicating the character of the offense.

We shall respectfully submit that the presence or absence of an incident which may or may not pertain to the procedure upon the trial cannot determine whether the act itself be criminal. To reason otherwise is to invert the orderly progress of events, and is likely to bring about a deceptive result. This we find to be true in the present case.

In the case of *U. S. ex. Jacobi*, Fed. Cases, 15460, it is said:

"The fact that the mode of trial in contempt cases is summary, by attachment, etc., and therefore peculiar or different from trials for most other crimes, is not at all significant of whether contempt is a crime or offense within the meaning of section 33 of the judiciary act."

In *Callan vs. Wilson* (127 U. S., 540) the question presented to the court was that of a right to trial by jury in a case of conspiracy in the District of Columbia, and Mr. Justice Harlan quoted with approval Mr. Justice Story, as saying (Story, Constitution, sec. 791) that the 6th amendment—

"in declaring that the accused shall enjoy the right to a speedy and public trial by an impartial jury in the State or district wherein the crime shall have been committed (which district shall be previously ascertained by law), and to be informed of the nature and cause of the accusation and to be confronted with the witnesses against him, does but follow out the established course of the common law in all trials for crimes."

After further discussion Mr. Justice Harlan said

"Without further reference to the authorities and conceding that there is a class of petty or minor offenses not usually embraced in public criminal statutes, and not in the class or grade triable at common law by jury, and which if committed in this District, may under the authority of Congress be tried by the court and without a jury, we are of the opinion that the offense with which the appellant is charged does not belong to that class."

The language just quoted indicates clearly that there is a class of offenses not usually embraced in public criminal statutes.

This is in the line with decisions coming down from our judicial beginnings in this country.

We know that large classes of cases, civil as well as criminal, are today tried without a jury, because so tried at common law, and that it is usually held that the constitutions, Federal and State, simply preserve jury trials and inaugurate no new system (6 Ency. of Law, p. 974, 2d ed.).

As bearing upon this point, the Chief Justice below, in his dissenting opinion, quotes as follows from the opinion of the Supreme Court of the United States, in the case of *Robertson vs. Baldwin*, 165 U. S., 276, wherein it is said:

"The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guarantees and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. Thus, the freedom of speech and of the press (art. 1) does not permit the publication of libels, blasphemous or indecent articles, or other publications injurious to public morals or private reputation; the right of the people to keep and bear arms (art. 2) is not infringed by laws prohibiting the carrying of concealed weapons; the provision that no person shall be twice put in jeopardy (art. 5) does not prevent a second trial, if upon the first trial the jury failed to agree, or if the verdict was set aside upon the defendant's motion. (*U. S. vs. Ball*, 163 U. S., 662-672); nor does the provision of the same article that no one shall be a witness against himself impair his obligation to testify, if a prosecution against him be barred by the lapse of time, a pardon, or by statutory enactment. *Brown vs. Walker*, 161 U. S., 519, and cases cited. Nor does the provision that an accused person shall be confronted with the witnesses against him prevent the admission of dying declarations, or the deposition of witnesses who have died since the former trial."

We think it is sufficiently apparent from the foregoing that the method of trial, whether with or without a jury, cannot be invoked to determine the character of the act as being criminal or otherwise.

*Right to Be Informed of Accusation and Confront
Witnesses.*

Nor may it be argued, as we believe, with greater success, that the constitutional provision with reference to the right to be informed of the nature and form of the accusation, and to confront witnesses, is of no importance in connection with the case of indirect contempt. It is true that it has been held more than once that a court has a right on a sudden disorder arising in or about the court-room to punish those who are responsible for such conditions, and to do so without the issuance of process, or the calling of witnesses. The only justification even for this action is apparently *ex necessitate rei*, and no court considering it, and no court at all of which we are aware, except it may have been the Court of Star Chamber in its worst days, has ever decided that in indirect contempts the accused was not entitled to be informed of the nature of the accusation against him (and this under oath), and to confront witnesses. We do not overlook the Shipp case, in which, however, by agreement of counsel and for the convenience of witnesses, testimony was taken by an examiner, and other cases in which the right to confront witnesses was not relied upon or brought to the attention of the judges.

The fact is as to direct contempts, unless the court acts immediately and summarily, it loses all jurisdiction over the supposed offender, and cannot proceed without regular charges against him and an opportunity to him to respond. See, for instance, *In re Foote*, 76 Cal., 543.

Good judges have refused to act in direct contempt cases where the utmost promptness was not observed on the part

of those particularly interested in the maintenance of the authority of the court. For instance, in a case reported in 6 Jurist, page 161, an attachment was sought against a man who had assaulted the plaintiff on the steps of the master's office, on adjournment, and was refused by Lord Coleridge, although the motion for the attachment was made but four days after the occurrence, and the justice refused to go into the question as to whether the assault on the master's steps was or was not sufficiently within the court-room itself, saying that—

“Remedy by indictment and by criminal information before the ordinary tribunals are both open to Mr. Wilton, and it therefore seems to me that I ought to decline to grant this rule in the manner in which it is prayed for.”

What Constitutes a Criminal Information?

It was the opinion of the courts below that the statute of limitations relied on by the respondents (sec. 1044, R. S. U. S.) only applied to such offenses as were prosecuted by information or indictment. Considering as we do other phases of this contention elsewhere, we maintain that contempt being a criminal offense, as demonstrated, the proceedings to bring about a conviction had in this case were by way of criminal information, whether so denominated or not.

The etymology of the word assists us. An information *gives the court to know*, and if the matter of which the court is made aware is criminal in its nature etymologically it is a criminal information. More specifically bearing upon the point, we quote the following from *Ex parte Thomas* (10 Mo. Appeals, 24, 25), wherein it is said:

“In the common law an information is ‘a declaration of the charge or offense against any one at the suit of the King.’ Amer. Dig. tit. Information. ‘An information is for the King that which for a common person is called a declaration.’ *Termes de la Ley voc*

disformation. * * * In practice such informations against certain criminal offenses were most usually filed by the Attorney General as the law representative of the Crown. But the courts also were representatives of his majesty, the fountain of justice, and might therefore, by leave given, empower any other officer or even a private person, to speak in the King's name to the like effect. Thus, whether the information was *ex officio*, requiring no leave from the court, or by private relation, which required a special leave, it was always considered, in theory at least, as an emanation from the sovereign executive authority. * * * Between a presentment of this character and a mere complaint or affidavit tendered by a subject or citizen, speaking for himself only, there is a broad distinction. The one bears an unquestionable guaranty of good faith and sufficient cause in the sleepless care for the commonwealth which the common law always ascribes to the sovereign power. The other conveys a comparative responsibility, and a possibility, at least, of mere recklessness or malice."

If we turn to perhaps the fullest authority on the subject or information, Hawkins' Pleas of the Crown, volume II, we find that—

"Informations are of two kinds, such as are merely at the suit of the King. Secondly, such as are partly at the suit of the King, and partly at the suit of the party."

Among the offenses done as he says "partly to the King," for which an information will lie, are among other things "contempts as departing from the Parliament without the King's license, disobeying his rights, escaping from a legal embarrassment on a prosecution for contempt," and again "abusing the King's commission to the oppression of the subject, making a return of a mandamus of matters known to be false, and in general any other offenses against the public good, or against the first obvious principles of justice and common honesty."

He finds that an information differs from an indictment little more than that one is found from the oaths of twelve men, and the other is not found, but is the allegation of the officer who exhibits it, and whatever certainty is requisite in an indictment is also necessary in an information.

In giving his history of the law of information, he finds that according to the recitals of statutes of 4th and 5th William and Mary, theretofore informations had been exhibited and prosecuted by private persons, and after the parties had appeared, the informers very seldom proceeded further, and they were without remedy for obtaining costs against the informers, and it was therefore enacted that the clerk of the Crown, in the said Court of King's Bench, should not without express order given by the court, in open court, receive such informations, or issue process without recognizance being entered into for the prosecution of the information.

Further discussing the subject, he states that it seems to have been the general practice not to make an order allowing the information to be prosecuted without first issuing a rule upon the person complained of to show cause to the contrary, which rule was never granted but upon motion made in open court, and supported by affidavit which, if true, made the case, because of its enormity, or other circumstances, seem proper for public prosecution, and he proceeds:

"If the person upon whom such rule is made, having been personally served with it, does not, at the date given him for that purpose, give the court good satisfaction by affidavit that there is no reasonable cause for the prosecution, the court generally grants the information, and sometimes upon special circumstances, will grant it against those who cannot be personally served with such rule as if they purposely absent themselves," etc.

From the foregoing it is manifest that informations might have been originated either by private individuals or by an

officer of the Crown, but that if filed by private individuals they had to have the sanction of an oath, and were originally the basis of a rule to show cause, and if the showing was insufficient, a trial resulted. This we understand to be in substance the English practice today.

Applying all of the foregoing to the case at bar, we find, first, the suggestion proceeding from the court that a crime may have been committed; second, the affidavit of the committee appointed by the court to make the preliminary examination charging the commission of that which is a crime, and next the issuance of a rule to show cause. The parallelism appears perfect.

But it will not be overlooked that the statute refers to "offenses," and criminal contempt is certainly an offense, and to "information" and not to "criminal information" as the Court of Appeals insists. We could therefore lay aside everything in the foregoing argument tending to establish the criminal character of indirect contempt, and, limiting ourselves to the proposition that it is certainly an "offense," and in truth prosecuted by an "information" insist upon the sufficiency of the statute as a defense.

Reverting now to the established practice in these cases, we again call attention to the article by Mr. Solly Flood in the Transactions of the Royal Historical Society, in which, referring to the year books, he finds that no case of contempt was dealt with—

"Otherwise than according to the course of common law, *i. e.*, by action, information, presentment or indictment."

So far is a proceeding for indirect contempt recognized as based upon what is in fact an information that we find in the Decennial Digest, title "Contempt," the sub-title "Preliminary Affidavit or Information," the two being treated apparently as equivalent, and in the cases cited under this head we find in *Indiana (Stewart vs. State, 140 Ind., 7; 39*

N. E., 508), a verified charge must be filed under the statute, stating the facts constituting the contempt, as in the nature of a complaint, and (*Snyder vs. State*, 52 N. E., 152; 151 Ind., 553), an unverified statement by a judge having personal knowledge of an indirect contempt is insufficient. In Michigan (*In re Wood*, 45 N. W., 113; 82 Mich., 75), a case of indirect contempt, decided on statute and general principles of law, the rule is based upon affidavits, and in Nebraska, under statute (*Herman vs. State*, 74 N. W., 1097; 54 Neb., 626), this is jurisdictional. In California (*Otis vs. Superior Court of Los Angeles County*, 82 Pacific, 815; 148 California, 129), a case of indirect contempt, the affidavit should contain a recital of the acts charged; and again (*Hutton vs. Superior Court*, 81 Pacific, 409; 147 California, 156), the affidavit of facts in an indirect contempt constitutes the complaint and to confer jurisdiction must show a case of contempt on its face. In Kansas (*In re Blush*, 48 Pacific, 147), without affidavit or information on which to base proceedings for constructive contempt, the defendant will be discharged. In Ohio (*Post vs. State*, 7 Ohio Decisions, 257), where the facts are within the personal cognizance of the court through his own senses, better practice requires an information to be filed by a proper representative of the State, and to permit the accused to file an answer. In Massachusetts (*Hurley vs. Commonwealth*, 74 N. E., 677; 188 Mass., 443), complaint filed by an assistant district attorney, signed by him as a public officer, the court said:

"Assuming as we do that a statement of a constructive criminal contempt should be properly verified before action is taken upon it by a court, we are of the opinion that a formal presentation, by a sworn prosecuting officer, is a sufficient verification to justify judicial action."

In Iowa (*Maloney vs. Travise*, 87 Iowa, 306), an information was filed by a private person in proceedings for contempt because of the existence of a liquor nuisance, contrary to injunction.

In Illinois (*People vs. Wilson*, 64 Ill., 195), the Attorney-General filed an information in the Supreme Court of Illinois, concluding with an application for a rule to show cause why the respondent should not be adjudged in contempt, and under this information the respondents were fined. In Indiana (*Worlan vs. State*, 52 Ind., 49) it was held that under the statute no information by prosecuting attorney was necessary, but an affidavit or "information," duly verified by the oath or affirmation of some officer of the court or other responsible person, was sufficient, the official oath meeting the condition.

In Kansas *vs. Henthorn* (46 Kansas, 613), a case of constructive contempt, the court said:

"A careful examination of the authorities satisfies us that in all cases of constructive contempt, whether the process of arrest issues in the first instance, or a rule to show cause is served, a preliminary affidavit or information must be filed in the court before the process can issue. This is necessary to bring the matter to the attention of the court, since the court cannot take judicial notice of an offense committed out of the court and beyond its powers of observation." Followed in *In re Nikell*, 47 Kansas, 734, and 45 Kansas, 618, *Kansas vs. Vincent*.

In Cartwright's case (114 Mass., 230) the information was filed by the Attorney-General and the defendant was found guilty of and punished for contempt, the power being held inherent in the court, but the contempt being regarded as an act "tending to obstruct or degrade the administration of justice."

Has the Supreme Court of the District of Columbia Inherent Power to Punish for Contempt?

Many courts of the United States, following the broad language of English decisions, have held that the power to punish for contempt is inherent in all courts, and as to the

general correctness of this proposition, laying aside statutes, and ignoring distinctions and qualifications we discuss elsewhere, we make no question. Whether it be true as to the courts of the District of Columbia involves a very special consideration.

In the absence of statutes we may admit certain power over direct contempt to be inherent, and even in presence of statutes as to courts existing prior to their being adopted it may well be that the power to punish for contempt exists parallel with such powers as the statutes may give, and it may also exist as to constitutional courts. The situation, however, in the Supreme Court of the District of Columbia, as well as in other inferior courts of the United States, we submit, with confidence, is that contempt is purely and absolutely statutory, the argument therefor, briefly stated, being as follows:

The first statute relating to contempts covering this jurisdiction was contained in the judiciary act of 1789 (1 Stat. at L., p. 73). This statutory power was afterwards limited and defined by the act of March 2, 1831. Upon this point we quote from *Ex parte Robinson* (9 Wall., 505) as follows:

"The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power. But the power has been limited and defined by the act of Congress of March 2, 1831. 4 Stat. at L., 487. The act, in terms, applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence and powers from the Constitution, may, perhaps, be a matter of doubt, but that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction. The act of 1831 is, therefore, to them, the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of

these courts in this respect to three classes of cases: 1, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; 2, where there has been misbehavior of any officer of the courts in his official transactions; and, 3, where there has been disobedience or resistance by any officer, party, juror, witness or other person, to any lawful writ, process, order, rule, decree or command of the courts. As thus seen, the power of these courts in the punishment of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments and processes."

We quote from the language of Judge Spencer, a most eminent lawyer of New York one hundred years ago, and who was one of the managers of the impeachment trial of Judge Peck (Peck's Trial, page 294), the following, as directly applicable to this argument:

"It is an undeniable principle, founded on the soundest reasons, that where a new jurisdiction is created, and a power is conferred, which is required to be exercised under certain qualifications, and under a particular state of facts, it is virtually a negation of the exercise of that same power, in the absence of the required facts."

In reaching this conclusion Judge Spencer relied to a degree upon the case of *Bollman and Swartwout*, 4 Cranch, 93, in which Chief Justice Marshall laid down a rule which we may well quote to sustain our own argument upon this point, and which reads as follows:

"Courts which originate in the common law, possess a jurisdiction, which must be regulated by their common law, until some statute shall change their established principles; *but courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction.*"

When, therefore, the Supreme Court of the District of Columbia was formed it came into existence limited and bound by certain statutory provisions relative to contempts, it being for this purpose a court of the United States and its powers as indicated by the opinion just cited. It might thereafter only punish for the specific contempts embraced in that statute and in the manner therein declared. It was not a court called into existence with general inherent powers, but only upon this point at least certain statutory powers. There cannot exist any power to adjudge contempts apart from the statute we have quoted.

It follows from the foregoing that it is only in so far as the acts of the respondents may be considered contrary to the statute that they are to be adjudged guilty, and as the law declares the crime and affixes the punishment, it is a criminal law, subject to all the qualifications which attach to criminal procedure, except so far as modified by the general rule of the common law, which makes, at the present time, contempts of court when made the subject of summary proceedings triable without a jury, but with the constant limitation that indirect contempts are only to be tried upon what is in fact an information, though denominated often an affidavit.

Summing up the foregoing argument, we find that:

1. There is no essential difference historically, or in practice, in cases of indirect contempt between the information upon which the court acts and the information in any other criminal case.

2. That while higher crimes are triable by a jury, lesser ones, including contempts, have very often been tried upon information, or affidavit, without a jury, right of trial by jury relating only to the grade of the crime and not to the existence of an act as a crime.

3. That the statutes of the United States having defined the crime and fixed the penalty (which may be fine or imprisonment), the offense against the statute is a crime.

4. That even if not criminal, contempt is an offense, and has in this case been prosecuted by an information, and, therefore those charged are entitled to the benefit of the statute of limitations.

Decisions Supporting Plea of Statute of Limitations in Criminal Contempt.

Decisions directly supporting the plea of the statute in the case of contempt, as might readily be concluded from the necessary effect of the preceding argument, as well as from the usually summary nature of proceedings to punish it, have been extremely rare. For if the theory supporting the direct punishment of contempt by summary proceedings be sound, that is, that the court should be able quickly to defend its own process, and defeat without delay any attempt to ignore them, of necessity it must follow that courts act so speedily as to give no opportunity for the passage of so long a period as would be prescribed by statutes of limitation. We are fortunate, however, to be able to call the attention of the court to one or two cases of direct importance. In *Beattie vs. The People* (133 Ill. Appeals, 651) the respondent was charged with having knowingly presented false evidence in a divorce case, and was found guilty. He had moved to dismiss the prosecution as barred by the limitation of 18 months, the statute providing that—

“All prosecutions by indictment or otherwise for misdemeanor, or for any fine or forfeiture under any penal statute, shall be commenced within one year and six months,” etc.

The court held that acts of contempt were criminal offenses within the meaning of this statute, saying:

"It cannot be supposed that the law intended relief and immunity after the lapse of a year and six months for all misdemeanors prohibited by a statute while offenses of the same class, recognized by common law only, are exposed to prosecution at any time during the life of the offender."

The court further said:

"We deny no part of the assertion (as to necessity of existence of the summary power of the court in cases of contempt) when we say that the power to punish for contempt, without limit as to time, is not necessary to preserve the dignity of the court or to enable it to enforce its process, or to attain the ends of its creation."

In arriving at this conclusion the court rested itself in part upon the case of *People vs. Neill* (74 Ill., 68), a case of contempt based on a private affidavit, wherein it was held that—

"A prosecution in behalf of the people and the proceedings for a contempt is in the nature of a criminal proceeding. *Stewart vs. The People* (3 Seam., 395). The people are not allowed an appeal or writ of error in a criminal case."

Although the statutes in Kentucky are somewhat different from those of Illinois, the Supreme Court of Kentucky, in the case of *Gordon vs. Commonwealth* (133 S. W., 206; 141 Ky., 461), adopted the same reasoning and reached a like conclusion as the appellate court in *Beattie vs. People*.

Want of Proper Replication to the Plea of the Statute of Limitations.

It will be noted that no excuse was given in the committee's report for allowing the time prescribed by the statute of limitations to run without the commencement of proceed-

ings, and that when the plea of the statute was raised by the respondents, no replication was filed excusing the delay, or explaining why the statute had not run. Either the explanation should have been given in the committee's report, or a proper replication filed. In support of this view we have to cite, in the first place, Clark's Criminal Procedure, page 240, wherein it is said, fortified by an abundance of citations, that—

"It seems to be established by the weight of authority that, where the time for the prosecution is limited by statute, the time averred in the indictment should appear to be within the limit, or else the facts necessary to take the case out of the operation of the statute should be alleged, otherwise the indictment shows on its face that the prosecution is barred."

The language of the Encyclopedia of Pleading and Practice, volume 13, page 234, title "Limitations," is as follows (citing numerous authorities):

"It is not necessary for the plaintiff in an action at law to aver in the declaration or complaint that his cause of action is not barred by the statute of limitations, this being a matter to be pleaded by the defendant, the correct practice being to aver these matters by way of replication to the plea."

The same volume, on page 238, indicates the necessity of a proper replication as follows:

"When the plaintiff in an action at law desires to avoid the plea of the statute of limitations or bring his case within any of the exceptions, the general rule is that he must by replication aver the facts and grounds of avoidance."

Without quoting at large the many authorities sustaining the general positions herein indicated, we cite Thompson *vs.* State (54 Miss., 744), as containing language particularly in point.

"If the accused pleads the statute specially, the representatives of the State, by a replication, will plead the exceptional facts which deprive the defendant of its protection, or if the defendant under the plea of not guilty, invokes the protection of the statute by proof, and by instructions asked, the district attorney will in the same manner claim the benefit of the exception."

In *Davis vs. Boyett* (Georgia), 66 L. R. A., 258, defendant was allowed to avail himself of defense of the statute at trial term by motion to dismiss, when it appeared from allegations of the petition that the cause of action was barred by the statute, no fact sufficient to extend bar of statute being pleaded.

In the case of *Attrill vs. Huntington* (in Equity), 70 Md., 199, the court held liability barred by Maryland statute of limitations, and that this defense properly arose under the demurrer filed in this cause, relying on *Belt vs. Bowie*, 65 Md., 355.

In *Wood vs. Carpenter*, 101 U. S., 135, where suit at law was brought, statute of limitations pleaded and replication filed to take case out of statute, which was demurred to and case dismissed, the Supreme Court affirmed the judgment.

In indictments where circumstances have intervened to stop the running of the statute of limitations better practice is to allege true date of commission of offense, and set forth facts which avoid the statute (*State vs. Myers*, 68 Md., 266). See also *State vs. Bilbo*, 19 La. Ann., 76; *State vs. Pierce*, 19 L. R. A., 90; *People vs. Miller*, 12 Cal., 291.

In the local case of *Clark vs. Mayfield* (3 Cranch, 353; Federal Cases No. 2858), it was held that on plea of the statute of limitations, plaintiff cannot avail himself of the exception in favor of merchants' accounts, without stating it in his replication. It is not admissible in evidence upon the general replication to the plea.

If, therefore, we are right in our contention that the statute of limitations is an available plea in cases in indirect

contempt, then it must follow that the court erred vitally in overruling the plea of the statute, and refusing to dismiss the proceedings, based upon the want of such replication, and also in refusing to find that the charges against the respondents were barred by the statute of limitations.

As to What Charges the Plea of the Statute Was Available.

It is said by the court below, in its opinion upon the question of the statute of limitations, that specifications 10 to 16, inclusive, of the charges against respondent Gompers definitely named dates within three years of the filing of the statute, and that therefore as to these seven specifications (Record, page 42)—

“the statute could have no application, even were it conceded to apply to contempts.”

This is the language of the court although the pleas addressed themselves to the several acts charged separately.

The answer to this proposition is several.

1. To begin with, a single judgment of conviction is had in this case as to each of the three respondents, and if by reason of the statute Gompers was guiltless as to any one charge, the judgment against him must fail under the decision of the Supreme Court of the United States in *Gompers vs. Buck's Stove and Range Company*, because, there having been no line of distinction drawn between the punishment for the several charges, it will be assumed that the measure of punishment has been determined by their having been found guilty of certain charges of which they could not have been guilty, the plea being good.

2. The respondent Mitchell is only found guilty of an act occurring more than three years before the filing of the committee's report, to wit, in January, 1908.

3. The respondent Morrison is only charged within three years, under paragraph 4 of the committee's report (Record, page 177), although found guilty of acts within and without said period, and for the reason indicated under paragraph 1, his conviction is invalid.

4. As we have shown in the prior part of our argument, none of the defendants is to be held liable for anything done by him except in violation of the order of December 18, 1907, and inasmuch as this order terminated by its own terms March 23, 1908, it is impossible that after that date any respondent should be charged with a violation thereof. Inasmuch as the report of the committee was not filed until June 26, 1911, three years and three months had gone by during which the original order was entirely dead, and therefore as to any of the acts which were committed after March 23, 1908, even although within one day of the filing of the committee's report, the plea of the statute must be regarded as effective, and the constant objections raised throughout the proceedings by the respondents, based upon this theory of the case, should have been sustained, instead of having been overruled.

Résumé as to Plea of Statute of Limitations.

Summing up the argument on this point, we have to say—

1. From its beginnings contempt of court has been a criminal offense, for many years triable only by jury.

2. English and American courts unite at this day in regarding it as a crime, although usually tried by the court in a summary manner.

3. Courts have granted, or refused, as the case might have been, writs of error, because the offense was criminal.

4. Presidents have pardoned those convicted of criminal contempt as having been guilty of an offense against the United States.

5. The want of a trial by jury does not, because of the constitutional requirement, affect the character of contempt of court as a crime.

6. In indirect contempt the accused has a right to be informed of the nature of the charges against him, which must be put under oath, and to confront witnesses.

7. The prosecution in this case was in fact a prosecution under a criminal information historically and otherwise, and had under the statute, the Supreme Court of the District of Columbia having no power to punish outside of the statute, and even if only an "information," being for an "offense," the statute of limitations in this case bars punishment.

8. Courts have repeatedly decided the direct proposition that the criminal statute of limitations could be invoked to bar prosecutions for the offense of contempt of court.

9. The plea of the statute being good, and no sufficient replication having been filed, the cause should have been dismissed, and, the same point being insisted upon at all stages of the proceedings, if the cause were not dismissed, the accused should have been acquitted.

II.

6. THE MAJORITY OF THE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS ANY EVIDENCE TENDING TO HOLD ANY OF THE RESPONDENTS GUILTY OF THE CHARGES AGAINST THEM OR ANY OF THEM.

8. THE COURT OF APPEALS ERRED IN FINDING THAT ANY UNLAWFUL BOYCOTT EXISTED, OR THAT ANY ACT IN FURTHERANCE OF A BOYCOTT WAS INDULGED IN BY ANY RESPONDENT AFTER DECEMBER 23, 1907.

10. THE MAJORITY OF THE COURT OF APPEALS ERRED IN FINDING THE RESPONDENTS GUILTY OF THE CHARGES AGAINST THEM.

It is, we respectfully submit, impossible to read the opinion of the trial court without coming to the conclusion that what the court had in mind was not so much the supposed contempt of court embodied in the charges, as what the court considered a want of respect for judicial authority, and that it was this latter, rather than the first, for which punishment was meted out. If this view be correct, and in point of fact the respondents had inflicted upon them severe sentences for offenses not charged in the committee's report, then the conclusions of the court were based upon false premises and its sentences correspondingly not supported by the findings as indicated by the opinion. In sustaining the findings of guilt the Court of Appeals seems to have fallen into the same error as we shall endeavor to show. Let us make this point clear. Toward the conclusion of the opinion, the trial court found as follows:

"The evidence shows for these respondents an assiduous and persistent effort to undermine the su-

premacv of law by undertaking insidiously to destroy the confidence of the people in the integrity of the tribunals which maintain it; this by inoculating the minds of their following and the people with a virtue of mischievous falsehood and misrepresentation concerning the courts and judges, seeking and hopeful that thus the support of the people might be withdrawn from these tribunals, and by this means their power undone, their judgments rendered valueless and forceless.

"To the startling but none the less deliberate end of erecting themselves into an autocracy from whose mischievous edicts no law could give redress and the land know no appeal" (Record, pp. 128, 129).

That the major thesis sustained in the court's argument led the court to this conclusion and that the real charges made by the committee were entirely minor in the mind of the court is evident from a careful review of the opinion. Without undertaking to call attention to everything sustaining this view, for in fact to do so we would be compelled to go through the opinion line by line, we invite the attention of this court to some citations having reference only to the conclusion we have above quoted and having no reference whatever, except in the extremest sense, by way of argument, to the specific charges against the respondents. We quote as follows:

"In his annual report to the convention of the American Federation of Labor of 1905, Gompers, president, said in part:

"In view of the continued use or abuse of the issuance of the writ of injunction in labor disputes there can be no question but that it is our bounden duty to impress upon Congress the necessity of enacting a bill which shall relieve our fellow-workers from the injustice which so many are compelled to endure. * * * There is no act which is a lawful act that a workman may do from which he should be enjoined from doing by an injunction of a court; there is not an act, if it be an unlawful act, which

a court by its injunction may enjoin for which there it not already a law with its provided penalty.

"Viewed from any point, the issuance of injunctions, as we have witnessed them in our own country cannot be defended in either law or morals. * * *

"* * * The question of the courts' abuse of the injunction powers is in a most unsatisfactory condition, and will not be settled until settled right" (Record, pp. 72-73).

It will be noted in the foregoing quotation that respondent Gompers treated of the general subject of injunctions without the slightest relation to the acts with which he is charged, the annual report of 1905 having been submitted about two years prior to the commencement of the original litigation herein. Next we have a quotation from the report of the committee on the president's report, occurring at the same convention, written not by any of the respondents, but cited by the court as supporting the court's conclusions, and reading as follows:

"Your committee heartily agrees with what the president said in his report and your committee would add thereto: * * * that injunctions always have been a prerogative of sovereignty, delegated at times, used direct at others. * * *

"It has been within the last hundred years limited to the protection of property rights and had nothing to do with the enforcement of personal rights. It was under this construction and limitation that it was adopted into our judicial system. The usual argument in favor of its use in labor disputes is that it is needed to protect the property—business—of the party against whom the strike or boycott is levied, and that the labor organizations, or members thereof, being unable to respond in damages there is no other remedy at law." * * *

"In connection with this your committee desires to call attention to a so-called anti-injunction bill, introduced in the last Congress, the substance of which bill was that no injunction should be issued by any

judge until he had heard both sides. The result of such legislation would inevitably be to make him the arbitrator in labor disputes and to confer upon him the power to use the writ of injunction to enforce his decree. Your committee recommends that the American Federation of Labor use all its power to prevent the passage of any such legislation" (Record, p. 73).

This is followed by the report of the committee on boycotts, describing their use, with which the respondents are not connected and which report was made two years before the original action. Again (Record, p. 74), we find a long extract from the report of respondent Gompers to the convention of 1906, criticising the wrongful use of injunctions, but having no relation whatsoever to the facts of this case, amounting merely to a discussion of the propriety of what was supposed to be the then existing law on the general subject of injunctions. This is followed by the report of the committee on the president's report (Record, p. 74), which has relation entirely to the support which should be given to the bill pending in Congress, and in its conclusion refers to what it considers an abuse of the power of injunction as follows:

"Your committee believes that there is no tendency so dangerous to personal liberty, so destructive of free institutions and of a republican form of government as the present misuse and extension of the equity power through usurpation by the judiciary" (Record, p. 75).

We find a speech of Mr. Gompers at a labor-day celebration at the Jamestown Exposition (Record, p. 78), cited apparently for the prime purpose of showing a disposition to criticise what he would consider an unlawful exercise of power on the part of courts.

Passing over some quotations having particular reference to the Buck's Stove & Range Company controversy, although

incidentally repeating in spirit language already quoted, we find the following, relied upon by the court, not apparently to prove the charges contained in the committee's reports, but to demonstrate a general want of respect for the courts:

"Injunctions as issued against workmen are never used or issued against any other citizen of our country.

"It is an attempt to deprive citizens of our country when these citizens are workmen, of the right of trial by jury. * * *

"We protest against this discrimination of the courts against the laboring men of our country which deprives them of their constitutional guarantee of equality before the law. * * *

"The issuance of injunctions in labor disputes is not based upon law, but is a species of judicial legislation, judicial usurpation in the interest of the money power against workmen innocent of any unlawful or criminal act. * * *

"The injunctions against which we protest are flagrantly and without warrant of law issued almost daily in some section of our country and are violative of the fundamental rights of man" (Record, pp. 81-82).

Want of respect for the courts is next alleged, in effect, in a quotation of the following language, from a report of Mr. Gompers to the Norfolk convention in 1907:

"It is a blow aimed at the freedom of speech, the freedom of assemblage, the freedom of thought, and particularly the freedom of the press. * * * The attempt to enjoin or prevent the publication of the 'We Don't Patronize' list of the American Federation of Labor, whether by injunction process or other judicial or legislative means, would be in direct violation of the constitutional guarantee and would indeed abridge free speech and a free press. In all the land there is neither law nor power to enforce such a decree" (Record, p. 82).

The respondents have then cited against them language of the committee's report at the same convention (the committee, it is stated, having been appointed by respondent Gompers), which discusses the general theory of injunctions as follows:

"We have carefully considered the president's report regarding the issuance of injunctions as used in labor disputes; we endorse what he has said, the efforts that have been made and the bill drafted and introduced. We urge upon every trade-unionist, friend of free institutions, and of human liberty, the earnest and careful consideration of the use now being made of the equity power given to courts.
* * *

"The theory upon which it is used in labor disputes seems to be that the conducting of a business is a property right, that business is property and that the earning power of property engaged in business is itself property which can and ought to be protected by the equity power in the same way and to the same extent as property, tangible property itself. * * *

"Your committee believes that there is no tendency so dangerous to personal liberty, so destructive of free institutions and of a republican form of government as the present misuse and extension of the equity power through usurpation by the judiciary" (Record, p. 82).

It will be noted that nearly or quite all of the foregoing quotations are from speeches or publications had long before the signing of the decree alleged to have been violated and for the most part long before the filing of the original suit or even before the existence in any way of the controversy out of which the original suit grew. The remainder of the opinion abounds in quotations from speeches and editorials, as to many of which clearly the primary purpose was to discuss the general theory of injunctions and the propriety of their issuance, rather than to make specific reference to

the suit out of which this contempt case has grown. It is fair to believe, therefore, that the main purpose of the quotations has been to sustain what we may consider the major thesis of the opinion, the specific alleged violations being merely accessory or incidental.

It will be borne in mind that all of the quotations we have given under this head were introduced in evidence under objection, as incompetent and irrelevant to the real issue and so far as it was the fact as having taken place long before the events complained of in the committee's report.

While the quotations we have given under this heading in our brief have specific relation to the opinion of the trial court rather than of that of the Court of Appeals, we have presented them as having at least historical value before this court.

*No Evidence of the Existence of Any Unlawful Boycott
After December 23, 1907.*

It is a curious fact that, although the respondents have been found guilty and sentenced to severe punishment for supposed defiance of the orders of court in practically continuing a boycott against an institution under the protection of the court after the passage of an injunction order, there is no affirmative evidence of any kind in the record, from beginning to end, of the existence of any illegal boycott whatsoever affecting, in the slightest degree, the affairs of the Buck's Stove & Range Company after December 23, 1907. The several respondents deny any knowledge of the existence of such a boycott, and no witness has been put upon the stand who has referred to a single instance proving or tending to prove its actual existence, the only facts which could even argumentatively be used being referred to hereinafter. In this respect the case of Government absolutely fails.

As we read the opinion of the majority in the Court of Appeals no evidence of any continuance of a boycott after December 23, 1907, is found by them and its existence is assumed—not demonstrated.

Respondents' Definition of "Boycott."

It may, therefore, be asked why, if we are correct in our statement, there should have been any finding by the courts below of such a fact, and such finding had to be obtained before a conviction could be had. The only legal ground for the belief that there was a boycott after the date named is found in the editorial written by Mr. Gompers and published as recently as April, 1909, entitled "A Self-inflicted Boycott," and largely quoted from in the opinion of the court (Record, p. 111). The editorial also appears in the record, pages 725-727. This editorial is to be understood by considering exactly what was meant by Mr. Gompers and the other respondents in their use of the term "boycott." Their definition occurs in many places in the record. In "A Review and Protest," written by Mr. Gompers, we find the following (*Federationist*, February, 1908):

"In the application for the injunction it was alleged by the Buck's Stove and Range Company that its business had suffered seriously from the refusal of union workmen and their friends to purchase its stoves and ranges. But would not absolute silence on our part as to its hostile attitude toward certain union employees be dishonest? Why should we encourage our members and friends to buy the Buck's stoves and ranges under the apprehension that this company deals fairly with union labor? Could not union employees then accuse us of an unfair discrimination, of trickery, and humbug? * * *

"Justice Gould seems to base this injunction on the assumption that there has been a combination of numbers of wage-earners 'conspiring' to commit unlawful acts. Such is not the fact. The public should understand clearly the difference between

combinations for unlawful purposes and the voluntary associations of wage-earners for entirely lawful and proper purposes" (Record, p. 249).

"Secretary Taft says a boycott is a combination of many to cause a loss to one person by coercing others against their will to withdraw from their beneficial business intercourse by threats.

"We defy any one to prove a single instance in this case where men or organizations combined to 'coerce' others against their will to withdraw patronage from the Buck's Stove and Range Co. Neither coercion, threats, nor conspiracy, in the unlawful sense, have been resorted to, yet the whole injunction is based upon this wrong assumption. * * *

"The members of organized labor are not themselves obliged to refrain from dealing with firms on the 'We Don't Patronize' list of the American Federation of Labor. The information is given them. There is no compulsion. They are entirely free to use their own judgment" (Record, p. 250).

"No person can be compelled to buy an article. If the purchaser chooses to let alone certain products for any reason, or for no reason, there is no way of compelling him to buy" (Record, pp. 250-251).

"Justice Gould, in one portion of his opinion, says:

"Defendants (the American Federation of Labor) have the right either individually or collectively to sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves."

"Here he states precisely the whole case of the American Federation of Labor. This is what we have done. This is the sum total of labor's offending. The publication of the Buck's Stove and Range Company and other firms on the 'We don't patronize' list is merely giving truthful information at the request of our members as to whether or not certain firms employ union men and concede the other conditions of employment usually granted by those concerns which recognize union labor" (Record, p. 251).

"It is true that there do exist illegal combinations and conspiracies for the purpose of unwarrantable

interference with business or even in its destruction, but those are not organized by wage workers" (Record, p. 252).

In a speech made by Mr. Gompers he says:

"You cannot make me buy anything I do not want to buy. I can tell my friends to do likewise, and they have a right to do what I have a lawful right to do and I have a legal right to tell them to do. No man has a vested right in my patronage. I have a right to bestow; I have a right to withhold and transfer it to anyone else, and I want to say this about that, injunction or no injunction, I won't buy a Loewe hat nor a Buck's stove or range" (Record, p. 326).

In an editorial from the *American Federationist* he says:

"No union could, if it tried, force an employer to enter into an agreement with it. No union attempts such unbusiness-like tactics. The most any union has done is to decline to buy the products of a firm which declined to employ union men and grant the prevailing rate of wages, hours of labor, and conditions of employment. Supposing that they were exercising their constitutional right of free speech, union men have asked their friends and fellow-unionists not to buy such goods. A word as to this custom may not be amiss here.

"No manufacturer, no retailer, has any vested right in the purchasing power of an individual or of the community; no court can confer upon him that right. The patronage or purchasing of goods depends on the whim of those who buy. A purchaser may decline to buy certain goods, for the most absurd reason or no reason; yet the person who has those goods to sell has no resource by which he can force the purchaser to buy them" (Record, p. 330).

In an editorial Mr. Gompers said:

"There is no man who can ever point to any act in my whole life that reflects to my discredit as a man and as a citizen. I want to assure you on my

word of honor that so long as I live I will never buy a Loewe hat or a Buck's stove or range until these gentlemen come into agreement with organized labor and grant us conditions of fairness. Then they will get support and help. Until then, you may call it by any other name—boycott or no boycott—but I won't buy your hats anyhow."

In a report from the committee on boycotts of the Toronto convention of 1909, put in evidence by the committee, the following occurs:

"While the discussion of greater issues in the past year has tended to relegate to the background such rights as that of the boycott, yet I should be recreant in my duty were I to remain silent upon that subject, and thus, perhaps, strengthen an impression which has been assiduously given out by our opponents, that the boycott—that is, the right to withdraw patronage, to bestow it upon whom we please—has been withdrawn from the workers of the country during the legal proceedings in relation to the injunction secured by the Buck's Stove & Range Company" (Record, p. 545).

"We have always held, and we still hold that the workers, or any of the people, have the right to withhold or to bestow their patronage as they would choose; that they have the right to advise friends and sympathizers of this action and of the reasons therefor. It is hardly necessary to state that in the case of the workers, the unfair attitude of the dealer in question has always been the reason for withdrawal of patronage. It has been made clear that he refused to pay the standard rate of wages, and to agree to other equitable conditions which the workers seek through their organizations, and hence the withdrawal of patronage" (Record, pp. 545-546).

In a report made by Mr. Gompers to the Norfolk convention, November, 1907, he said:

"No corporation or company has a vested interest in the patronage of free men. If this be true, and

its truth cannot be controverted upon any basis in law, free men may bestow it upon another." And this, too, whether in the first instance the business concern is hostile or friendly. "It is true for any good reason, and in the last analysis for no reason at all" (Record, p. 799).

General Considerations as to Guilt or Innocence of Respondents.

If no unlawful boycott existed and no act in furtherance of it was committed after December 23, 1907, then we contend that it was an error to find the respondents guilty of any of the charges filed against them.

We have already laid down in this brief the proposition that there was no evidence whatsoever tending to indicate the existence of any conspiracy against the Buck's Stove & Range Company after December 23, 1907, even if there was such conspiracy prior thereto, and no evidence tending in that direction, in any degree, unless the editorial in the April, 1908, *Federationist*, entitled "A Self-inflicted Boycott" (Record, p. 725), and the resolution of the United Mine Workers of America of January, 1908, could be regarded as evidence of its existence.

We need not enlarge upon what has been said with regard to the editorial in question, except to call attention to this circumstance: Mr. Gompers' use of the word "boycott" and the meaning placed upon it by him, has been demonstrated by extracts from the record, showing his understanding as to the language it was permissible for him to use, and with this idea in mind it is worth while to examine the order of December 18, 1907, reproduced in the same words, save as to parts which became immaterial in the final decree of March 23, 1908. The essential portion of the first order was that the defendants were—

"Restrained and enjoined until the final decree in said cause, from conspiring, agreeing or combining, in any way, to restrain, obstruct or destroy the business of the complainant, etc.,

To this end, they were specifically directed to refrain from a large number of acts which the court evidently considered tended in that direction, including, among others, the circulation of the *American Federationist* or other document which in any way referred to the complainant, its business or product, in the "We Don't Patronize" or "Unfair" list of the defendants, or contained any reference to the plaintiff in connection with the term unfair or we don't patronize, or called the attention of its customers or dealers or tradesmen, or the public, to any boycott against them, or that it should not be purchased or dealt in by any dealer, tradesman, or person for the purpose of injuring or interfering with its business or product, or coercing any person not to purchase the same, and from intimidating any person who might buy or sell it.

While this decree is very sweeping in its terms it is not, we think, to be supposed that it contemplated shutting up the mouths of the respondents, in any respect, except it be for the purpose of furthering such a boycott as the court had declared to be unlawful. Assuredly if there were no boycott of any unlawful character in existence, it was not the intention of the court by this decree to prevent the respondents from refusing to deal in the product of the Buck's Stove & Range Company, or from advising others not to deal. We will proceed to explain the reason for giving this interpretation to the decree in question, although its language is of the broadest conceivable character.

Before the signing of the decree, Mr. Justice Gould, who signed it, had accurately described the respondents' rights in the premises. He said:

"Defendants have the right, either individually or collectively, to sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves."

If the respondents possessed this right ascribed to them by Mr. Justice Gould, they possessed it equally as well after as before the decree of December 18, 1907, except it be that they were undertaking to exercise it pursuant to some conspiracy to injure which would be of an unlawful character. If they possessed the right, they likewise possessed the power to make public declaration of their intention to exercise the right.

The present record will be searched in vain, we say, to find a single instance on the part of the respondents, or of their associates, wherein a conspiracy to injure, or the actual infliction of injury was done after the date in question. The testimony of all of them is to the effect that they know of no boycott having been prosecuted after the date named, meaning an unlawful boycott, such as is described by Justice Gould in his opinion, and there is not one word of evidence in contradiction of this fact. There were after that date no threats of any kind leveled against the Buck's Stove & Range Company, or its customers; no publications by anybody of which the respondents had any knowledge, save those made by themselves; no issuance of circulars affecting any of the customers of the Stove Company; no parading of banners; no obstruction of the sidewalk; no visits to customers to dissuade them from selling Buck's stoves; no abandonment by any customer of his relations with the Stove Company; no warnings in any manner to customers not to handle the stoves under a penalty of being boycotted; no vote to fine any one who might deal with the Stove Company, save the vote of the United Mine Workers of America, which we shall have occasion to discuss; no letters from national organizations calling upon any one to boycott the Stove Company's customers, and no intimidation of any kind whatsoever—in short, none of the things which are set out in the opinion of Mr. Justice Gould and which caused him to sign an injunction order. In other words, as far as this record discloses, none of the respondents or any of their associates went

one step beyond the point Mr. Justice Gould, in his opinion, said they had a right to go.

If we are correct in the foregoing statements, and we invite any contradiction, then there was no departure by the defendants from the idea sought to be conveyed by Mr. Justice Gould in his order.

Realizing that the order was inapt in its terms to carry out the opinion expressed by Mr. Justice Gould, his attention was called at once to the fact that:

"It might be construed to enjoin the defendants from announcing to others that they had united and combined not to deal with others who should deal with plaintiff or purchase its products,"

and also that it might be

"Construed to prevent the defendants and their associates from saying to others that they had united and combined not to patronize the products of the plaintiff,"

and also that it might be

"Construed to enjoin the defendants from uniting together to agree not to patronize plaintiff's products."

What happened thereafter appears from the testimony of Mr. Morrison. He states (Record, p. 599) that—

"Mr. Ralston stepped up to the bar and stated to the court that the defendants thought the injunction deprived them of their rights, and would like to have the judge state its limitations.

"Judge Gould said in substance that if he did, it might deprive the plaintiffs of the relief they desired. That if the defendants were ignorant men and did not know their rights, it might be a different proposition, but that he had read a statement made by one of the defendants, or an article, which indicated to him that they understood their rights."

Again, on page 609, he says:

"Judge Gould refused to modify the motion that had been made. Was not familiar with the motion **made**. Had not read it. He remembers that the motion was denied, and thereupon something occurred orally. Witness went to Mr. Ralston, and said 'I wish you would ask the court to define the limitations of the injunction.' To the best of witness' recollection Mr. Ralston advanced and said 'Your Honor, the defendants would like to have you define the limitations of the injunction. The defendants seem to think that their rights—does not know whether he said personal rights or constitutional rights—are denied to them.'

"The judge replied that if he defined the limitations of the injunction it might prevent the plaintiffs from securing the relief they desired. That if the defendants were ignorant men and did not know their rights it might be considered. But that he had read statements or articles which led him to believe they understood their rights and would not be inconvenienced because of his refusal to state the limitations of the injunction. Remembers the incident because he wanted to know what the injunction meant."

The respondents thereafter were left to interpret the injunction in the light of Judge Gould's opinion, and to believe that it was not his desire or intention that the order should be construed as exceeding the limits of the opinion.

Bearing in mind, therefore, Judge Gould's opinion, interpreting the order in the light of the opinion, let us consider the things which were charged against the respondents and what may be construed as proof, and determine, if we may, whether any possible offense was committed by the respondents. In this connection we will take up first the case of—

Samuel Gompers.

1. The essence of the first charge against him (Record, p. 4) is that after the passage of the decree, and before it became operative by the filing of the bond required by it, he hastened the publication and issuance of the January *Federationist*, containing the name of the Stove Company in the "We Don't Patronize" list, and that his purpose in hastening it was to affect the complainant's business, delivering the copies to the American News Company and to the Washington News Company for distribution, taking no steps to prevent the circulation after it had been learned that the injunction undertaking had been given. If it were true that he hastened the circulation for the purpose indicated, this would not constitute an offense, for the injunction might never have become operative by the filing of the bond and, under the decisions of this court, did not become operative until such bond was filed. (See *Drew vs. Hogan*, 26 App., D. C., 55.) In so far as this paragraph undertakes to charge that said Gompers took no steps to prevent circulation by the news companies after the filing of the bond, it is unimportant, because it does not appear that said companies circulated any thereafter. In so far as it undertakes to charge said Gompers did not, after the injunction went into effect, undertake to stop the circulation, it is not sustainable, for we have the testimony of several witnesses, including Gompers himself, to the fact that as soon as the bond was filed all employees were instructed not to circulate any without referring the matter to him, and that he never thereafter authorized such circulation or knew of any circulation having taken place.

2. The second charge is to the effect that after the filing of the undertaking he caused and permitted the further circulation through the mails, and otherwise, of the num-

ber in question. This is not sustained by proof, but is contradicted in the manner we have just stated.

3. This paragraph charges that after December 23, 1907, said Gompers caused and permitted to be circulated several thousands of copies of the printed proceedings of the convention of the Federation held in November, 1907, which proceedings referred to the Stove Company and its business in connection with the "Unfair" list, and in addition was alleged to contain a report which he had submitted to the convention, discussing the issuance of injunction, and an editorial of which he circulated 30,000 copies, contained in the February issue of the *American Federationist*, discussing the opinion of Mr. Justice Gould. The report so alleged to have been submitted appears to have been made to the Nashville convention ten years previously (Record, p. 282), although both Judge Wright and the majority of the court cite it as having been made and circulated in 1907.

Of the things actually published therein, it is to be said, as appears from the testimony of Mr. Gompers, and Mr. Morrison as well, that while the proceedings were circulated, and those proceedings contained his report, the volume in question was one of some 400 to 500 pages, in small type, and there were discussed within its covers a great variety of subjects, the matters in question concerning but one of them, and that the volumes were designed to inform the members of the organizations of the proceedings of their representatives. They were not circulated with any reference whatsoever to the Buck's Stove and Range Company, and it never occurred to them that in such circulation, they were, in any wise, violating the injunction, or doing anything having any reference whatsoever to its purposes.

As to the editorial referred to, its inclusion under this heading is an apparent error, as it was not published until long after the circulation of the report of the proceedings. Besides which the editorial, while reviewing and discussing

the opinion of Mr. Justice Gould, was only such an editorial as might be written by any one viewing it from respondents' standpoint and desiring to discuss the issues involved. It contains nothing which is out of harmony with the opinion of Mr. Justice Gould, in so far as the exercise of any right of speech or action is concerned, stating, as the opinion does, that—

"Defendants have the right either individually or collectively to sell their labor to whom they please on such terms as they please, and to decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves."

In fact, in the course of the editorial Mr. Gompers uses the following language:

"It would seem that having made the above-quoted statement, Justice Gould would have found in it the reason for a refusal to issue the injunction. He, however, goes on to assume that there has been some unwarrantable interference with the plaintiff's business, though neither in his opinion nor in the injunction itself does he make it clear how he arrived at the conclusion that the union course was any other than as indicated in his own language."

4. Under this heading Mr. Gompers is charged with having published in the February *Federationist* a copy of the decree of injunction, with an editorial commenting upon its effects as to being limited to the District of Columbia, and as to which Gompers is alleged to have said that he thought the opinion of complainant's counsel, referred to in it, would be valuable to working people, so that they might be guided by it. It is further said that the publication of this editorial was followed by articles misrepresenting the court, published in various trade papers throughout the country.

That Mr. Gompers made the publication is undoubted, it not being in furtherance of an unlawful boycott, and that

he had a right to interpret the decision, even erroneously, if he were in error, ought not to be the subject of question.

Why Mr. Gompers should be responsible for the profanity and bad rhyme of which some unknown writer was guilty in some part of the country, not disclosed by this paragraph, does not seem obvious. Surely neither the one nor the other was the natural or logical consequence of the thing he did.

5. Mr. Gompers is next charged with uniting with Morrison, Mitchell, and others in circulating many thousands of copies of a paper entitled "An Urgent Appeal for Financial Aid," etc., and also causing the same to be printed in the February, 1908, *Federationist*, containing language descriptive and critical of the injunction decree signed by Mr. Justice Gould, and that he caused the wide circulation of these documents.

We do not think that any person reading this appeal could have any reasonable doubt as to the purpose for which it was written and circulated. The three respondents with others were the subjects of attack in court through the medium of a suit in equity. They were not themselves men of wealth, although representing an organization enormous in size. The attack was made upon them as officers of that organization. They had a right to expect that the organization would support them as its representatives against this attack. They had a natural right, therefore, to appeal to members of that organization for aid in the existing suit. In fact, the persons to whom they appealed were persons attacked, because the organization to which they belonged was affiliated with the American Federation of Labor. The appeal, therefore, to all intents and purposes, was directed to fellow-defendants. It is as if Mr. Gompers had gone to Mr. O'Connell, a fellow-defendant, and said to him "we must raise money to defend this stove company suit, in which Judge Gould has issued an injunction. I think the in-

injunction is unsound in principle, and that you and all other members of your organization should contribute to resist it, and to perfect an appeal should a final injunction be issued." This would constitute a violation of the strict letter of the order of Mr. Justice Gould, in that reference would be made to the existence of the injunction, and its effect, and the attention of Mr. O'Connell would be called to the fact that there had theretofore, as stated by the court, existed a boycott. And yet, nevertheless, such an interpretation of the injunction would be no more reasonable than its literal interpretation as applying to the attorneys in the case, which literal interpretation would make them guilty of contempt for the writing of a necessary brief. It cannot in justice be thought that the intention of Mr. Justice Gould was to deprive respondents of the means of self-defense, either by raising of funds therefor, or by the employment of attorneys who would have to do the work usually devolving upon them. The claim that such acts constitute contempt of court seems to us unfounded.

It is true that with this communication was sent out an editorial (Record, p. 267), which editorial discussed at length, though in a temperate way, the possible effect of Mr. Justice Gould's action. This editorial was a natural and necessary part of the "Urgent Appeal." If codefendants were to be asked to furnish funds for the carrying on of an appeal, they were entitled to be informed of the nature of the issues and of the argument which it was believed would tend to overthrow the preliminary injunction. This was, as is manifest from its perusal, the very purpose for which the editorial was circulated, and it ought not to be treated as if its prime purpose and object was something entirely different, a purpose which has been disavowed on the stand by all these respondents, and which is inconsistent with the natural and innocent purpose appearing upon the very face of the document itself.

6. Mr. Gompers is charged with having published in the March, 1908, *Federationist* the following (Record, p. 10):

"It should be borne in mind that there is no law, aye, not even a court decision compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

We have but to call the attention of the court to the fact that both by the opinion of Mr. Justice Gould and the several opinions of the Court of Appeals this was a mere statement of a legal fact, and the fact itself is not such a one as would be associated with the idea of unlawful boycott.

7. It is said that Mr. Gompers published in the April, 1908, *Federationist* the following (Record, p. 10):

"The temporary injunction issued by Justice Gould, of the court of equity, of the District of Columbia, in the (Van Cleave) Buck's Stove & Range Company of St. Louis against the American Federation of Labor, its officers and all others, has been made permanent. This case will now be carried to the Court of Appeals of the District of Columbia.

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

* * * * *

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove & Range Company of St. Louis. Fellow-workers, be true and helpful to yourselves and to each other. Remember that united effort in the cause of right and justice must triumph."

Of this we have the same comment to make as under the head of 6.

8, 9, 10, 11. In these several paragraphs Mr. Gompers is charged with the publication of editorials or the making of public speeches in different parts of the country, the fundamental idea of which is expressed in the quotations already made, and, therefore, we are not called upon to elaborate the argument under each particular head.

12. Under this heading Mr. Gompers is charged with the language contained in the report to the Executive Council of the Federation of Labor, made in September, 1908, and thereafter published in the *Federationist* for November, 1908, the comment made being such as he would naturally have a right to make to his fellow-associates in the litigation, and which may not be sustained as contempt on his part, unless it be contempt for fellow-defendants to associate together and make known to each other the litigation in which they are engaged, and equally contempt to counsel, one with the other, as to the best methods of meeting such litigation. The fact that the counseling is held in public cannot be treated as contemptuous of the court, except it be that it be had for the purpose of defeating the court's order. This intent, we have to repeat, has been denied by the several respondents, and again we say there is no evidence of the existence of any continuing unlawful boycott, to which the wrongful intent would have to have relation.

13, 14, 15. These several paragraphs have reference to speeches made by Mr. Gompers on different occasions, commenting upon the effect of the injunction and describing its limitations, which limitations are indicated by the very language of Mr. Justice Gould and the subsequent language of the Court of Appeals in their several opinions, as hereinbefore pointed out.

16. This paragraph refers to language of a report made by Mr. Gompers to the convention of the Federation of

Having therefore been found guilty, in the first place, of the use of language not charged as constituting contempt under the report of the committee, and for the action of other people, and not having been found guilty of the language complained of by the committee, although sentenced therefor and going no further, the decision of the trial court was infected with such error as constituted absolute invalidity.

John Mitchell.

1. This respondent is charged with contempt for uniting with Samuel Gompers, Frank Morrison, and others, in circulating a paper called "Urgent Appeal," etc., and copies of reprint of the editorial from the February, 1908, *Federationist*, hereinbefore referred to. Mr. Mitchell was ill at the time, and had nothing whatever to do with signing or circulating either of these documents. He could not, therefore, be held responsible therefor, there being no such thing known as contempt by ratification, and in point of fact, as we have heretofore indicated, there was no contempt whatsoever in the acts complained of.

2. This paragraph charges Mr. Mitchell with circulating the *American Federationist* containing the interpretation upon the order granting the injunction made by Mr. Gompers, and commented on when treating of the alleged offenses committed by him. We have the same reply to make to this as we have made to paragraph No. 1—that is, that Mr. Mitchell took no part whatever in this circulation and knew nothing about it until afterwards.

3. Mr. Mitchell is charged with having presided over the meeting of the Annual Convention of the United Mine Workers of America, held on January 25, 1908, at which the following resolution was adopted (Record, p. 140):

"Whereas, The Buck's Stove & Range Company, of St. Louis, Mo., have taken legal steps to prevent organized labor in general, and the officers and executive committee of the A. F. of L., in particular, from advertising the above-named firm as being on the 'Unfair' or 'We Don't Patronize' list, and

"Whereas, By the issue of such an injunction or restraining order as prayed for by the above-named firm, organized labor will be deprived of one of its most effective weapons, and

"Whereas, J. W. Van Cleave, the president of the National Manufacturers' Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"*Resolved*, That the U. M. W. of A., in Nineteenth Annual Convention assembled, place the Buck's stoves and ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above make be fined \$5.00, and failing to pay the same be expelled from the organization."

It is true that Mr. Mitchell presided at the meeting in question, and, so far as the record shows, submitted the resolution to the convention, and declared it carried. Mr. Mitchell, however, has declared in his testimony, that he has no recollection of the circumstance of the adoption of the resolution; that if the record says he was present he presumes he was.

It is true that on several occasions Mr. Mitchell made use in substance of the following language, it appearing in the February, 1908, *Federationist*, and quoted in the opinion of Mr. Justice Wright (Record, p. 119):

"Mr. Mitchell is charged with and admits having presided at a convention of the United Mine Workers of America at which a resolution was adopted declaring 'unfair' the products of the Buck's Stove & Range Company.

"It was Mr. Mitchell's duty as president of the mine workers' organization to preside over this convention. He had no knowledge that a resolution

upon this subject was to be considered, and when it came before the convention he was so little impressed with its significance that he did not even remember the subject of the resolution until the contempt proceedings were instituted. However, even though he were conscious of the full import of the resolution referred to, he committed no offense against the law by retaining his position as presiding officer of the convention when the resolution was adopted.

"He had, of course, three alternatives, none of which a self-respecting man could have availed himself. He could have resigned his position as president of the United Mine Workers of America, or he could have called some other member to take the chair, thus shirking his own responsibility by placing it upon the shoulders of another, or he could have become the advocate and defender of the Buck's Stove & Range Company, and opposed the passage of the resolution.

"The injunction did not require Mr. Mitchell to advocate the cause of the concern, he was not commanded to defend its attitude in the controversy with its employees; but it seems that his failure to do so constituted an offense against the court for which he is sentenced to prison."

This language was treated by Mr. Justice Wright as indicative of an admission that he was present and knew all about the resolution at the time, although the admission so called is put in this particular extract in a qualified way, the qualification itself indicating the want of complete knowledge on the subject on the part of Mr. Mitchell. He says "even though he were conscious of the full import of the resolution referred to," etc. In his several speeches on the subject, while this qualification is not expressed, it is perfectly obvious to the careful reader. Nowhere does he say that he had knowledge of the resolution or conscious knowledge of its purport at the time the question of its adoption was submitted to the convention, although the Court of Appeals treats his statements as if they showed such knowledge.

We have again to say that this resolution does not appear by any testimony in this record ever to have been followed up or acted upon by any miners' organization in the country. Whatever indication it may afford, therefore, of a willingness on the part of the national organization of miners to boycott in a manner which has sometimes been declared objectionable by the courts, it is not proof of the actual existence of a boycott, a distinction which must not be lost sight of.

Frank Morrison.

1. Mr. Morrison is charged with having received and becoming the custodian of a large number of copies of the printed proceedings of the 1907 *Federationist*, which are stated, as indicated in the charges against Mr. Gompers, to have contained language indicative of an intent to boycott the Stove Company, and providing for a so-called campaign of education (which in point of fact, according to the record in this case, seems never to have been carried out in the slightest degree). We have explained in discussing the case of Mr. Gompers that the proceedings were not and could not have been circulated for the purpose of any unlawful boycott.

2. Mr. Morrison is charged with uniting with others in printing and circulating the "Urgent Appeal" and the editorial of the February, 1908, *Federationist*. Under the heading of "Samuel Gompers," we have sufficiently commented upon this charge.

3. Mr. Morrison is charged with the circulation of the editorial in the *American Federationist* for February, 1908, construing the effect of the injunction of December 18, 1907. We have sufficiently discussed this matter and need not go into it further.

4. Mr. Morrison is charged with circulating many copies of the *Federationist* for the months of January, February,

March, April, May, June, and September of 1908, each of which not only referred to the Stove Company in connection with the "We Don't Patronize" or "Unfair" list of the Federation of Labor, but made editorial and other reference to the complainant in connection therewith, and to the boycott declared by the Federation and the desirability of continuing and prosecuting the said injunction against it.

While Mr. Morrison did undoubtedly circulate many copies of the *Federationist*, some of which made editorial or other reference to the Stove Company, as a party to the then pending litigation, it is incorrect to say that any article in proof in this case discusses the desirability of continuing and prosecuting any boycott in any unlawful sense against the Stove Company. We may add that it does not appear that Mr. Morrison ever circulated a single copy of the January, 1908, *Federationist*, except one sent to Canada for a specific purpose not in connection with the stove company.

III.

10. THE MAJORITY OF THE COURT OF APPEALS ERRED IN FINDING THE RESPONDENTS GUILTY OF THE CHARGES AGAINST THEM AND ALSO IN SO DOING RELYING ON MATTERS NOT IN EVIDENCE, AND ON CHARGES NOT SUSTAINED.

In the other portions of our brief, we have discussed at length the matters particularly relating to this assignment of error with but a single exception. The opinion of the majority contains the following statement:

"That respondents did not intend to respect the order of the court is apparent from the following extract from the report of Compers made to the Norfolk Convention, which occurred between the date of the filing of the bill and the making of the temporary order, and which was published and cir-

culated after the order became effective. Recently one of the branches of the Federal courts decided by a majority vote that the boycott is illegal. * * * We should demand the change of any law which curbs the privilege and the rights of the workers to exercise their normal and natural preferences. In the meantime, we should proceed as we have of old, and, wherever a court shall issue an injunction restraining any of our fellow-workers from placing a concern hostile to labor's interests and themselves on our "Unfair" list, and enjoining the workers from issuing notices of this character, the further suggestion is made that upon any letter or circular issued upon a matter of this character, after stating the name of the unfair firm and the grievance complained of the words "We have been enjoined by the courts from boycotting this concern" could be added with advantage."

It is erroneous to say that the matter above quoted was presented in the report of respondent Gompers made to the Norfolk Convention, "which occurred between the date of the filing of the bill and the making of the temporary order, and which was published and circulated after the order became effective," the reason being that the matter referred to in the said opinion occurs only in the proceedings of the Nashville Convention of 1897, and not in the proceedings of the Norfolk Convention of 1907, and there is not the slightest evidence in the record to show that it was circulated at any time after about the time of the Convention of 1897, the only reference in the proof to the same being, so far as these respondents know, contained on page 282 of the record, and the statement with relation to the circulation thereof in the opinion of Judge Wright, and in the Committee's report, being entirely unfounded.

IV.

1. THE SAID COURT DID NOT PASS EXPRESSLY UPON ERROR ASSIGNED IN THE PROCEEDINGS BELOW, WHEREIN THAT COURT OVERRULED MOTION TO QUASH THE SAME UPON THE GROUND THAT THEY WERE CRIMINAL IN THEIR NATURE, THESE PROCEEDINGS BEING BROUGHT IN EQUITY.

2. IT DID NOT EXPRESSLY PASS UPON THE ERROR COMMITTED BY THE COURT BELOW IN OVERRULING THE MOTION TO SET ASIDE THE REPORT SUBMITTED BY THE COMMITTEE.

3. IT DID NOT PASS UPON THE ERROR COMMITTED BY THE COURT BELOW IN REFUSING TO STRIKE OUT THE NAMES OF THE COMMITTEE AND SUBSTITUTE THE NAME OF THE ATTORNEY OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, THE COMMITTEE HAVING BEEN BIASED BY REASON OF THEIR EMPLOYMENT AS ATTORNEYS FOR THE PLAINTIFF IN THE SUIT OF THE BUCK'S STOVE AND RANGE COMPANY VS. SAMUEL GOMPERS ET AL.

11. THE MAJORITY OF THE COURT OF APPEALS ERRED IN INFLICTING A CRIMINAL PUNISHMENT WHEN SITTING OTHERWISE AS A COURT OF EQUITY.

The subjects embraced within these four several assignments, we have discussed somewhat in connection with other subject-matter of this brief. We desire particularly in this connection to again insist that these proceedings, being

brought in equity, under an equity caption, were improperly brought, the matter complained of being purely criminal and there not being, at the time, any equity cause pending in connection with which it was proper to bring contempt proceedings. Not denying, but admitting, that courts, whatever may be their nature, have a general right to prosecute contempt proceedings, we nevertheless submit that such prosecution can only be in connection with some matter before the court; otherwise their powers are limited and restricted according to the nature of the court in which action is sought.

Further we have shown in this brief and in the record the absolute biased character of the attorneys who were appointed as a committee—the impossibility of their performing the judicial function of determining whether an offense had been committed. The basic step therefor in this case was improper, and the whole proceedings are erroneous therefor.

V.

12. THAT THESE RESPONDENTS BY THEIR APPEARANCE AND ANSWERS PURGED THEMSELVES OF ANY POSSIBLE CHARGE OF CONTEMPT, BUT THAT NEVERTHELESS THE COURT OF APPEALS ERRED IN HOLDING THEM GUILTY THEREOF.

The examination of the three petitioners shows clearly that none of them had in his mind any intention whatsoever of violating the orders of the court below, and in fact in the case of Morrison that he expressly sought information as to the proper interpretation of the directions of the court, and failing this, as heretofore shown in this brief, he interpreted the same in point of fact by reference to the opinion of Justice Gould, while no respondent committed any act whatsoever going beyond the limits permitted to him by the

opinion of the said justice. Contempt of court being an offense resting in intent, and no intent having been proven by the committee respecting the case, we submit that the respondents should be treated as having purged themselves of any accusation of contempt and be discharged.

VI.

SENTENCE FIXED BY THE COURT OF APPEALS

If the pending case were one which at all justified punishment at the hands of the court, then we believe the Court of Appeals was correct in its conclusion that the sentences imposed by the trial court were the result of an abuse of judicial discretion, and in support of this position we refer to the following cases, not including that of *Debs* who was sentenced to jail for six months, and whose offense was found to be of the gravest possible character, although, as we interpret the case, the court really treated it as a matter of civil contempt.

We take the liberty to remind this court of what other courts and the statutes have considered proper punishment in cases of contempt. In the matter of *Orr*, U. S. *ex. Kane*, 23 Fed., 748, in which a large number of strikers had assumed to stop the operations of a railroad in the hands of receivers, tried to prevent the engineers from running out the train and the trainmen from working, the particular respondent having indulged in threats of a grave character, the respondent was sentenced to four months in jail.

The only other case of which we have knowledge in which as severe punishment has been given by Federal courts is that of *Sacor* *vs. T. P. & W. R. R. Co.* (Federal Cases, No. 12905), wherein Drummond, circuit judge, sentenced to jail for four months the leader of a mob which had taken possession of and prevented the running of trains belonging to a railroad at the time in the hands of a receiver, while a

codefendant, who had drawn a weapon and threatened to shoot an engineer in the same connection, went to jail for two months.

Other Federal cases have usually provided for imprisonment from ten to thirty days.

As the Shipp case, where murder was permitted (245 U. S., 582) the punishment was ninety days imprisonment.

Of great weight in determining the character of the punishment inflicted in this case as to whether within the bounds of just legal discretion or not are the legislative expressions of opinion as contained in the statutes of many of the States of the Union, in no one of which are the courts allowed to imprison for contempt for a term exceeding six months, and in some in which they are not allowed to go beyond five or ten days.

Thus, in Florida fines for contempt may not exceed ten dollars or imprisonment thirty days (*Ex parte Edwards*, 11 Florida, 174).

In Louisiana fines are limited to fifty dollars and imprisonment to ten days (*State vs. Keene*, 11 La., 596).

In New York fines may not exceed two hundred and fifty dollars and imprisonment not in excess of six months (*King vs. Barnes*, 113 N. Y., 476).

In North Carolina the punishment is a fine not exceeding two hundred and fifty dollars or imprisonment not exceeding thirty days (*In re Patterson*, 99 N. C., 118).

In Ohio punishment may not be more than a fine not exceeding five hundred dollars and imprisonment not exceeding ten days (*Myers vs. State*, 16 Ohio State, 473).

In Tennessee fines are limited to fifty dollars and imprisonment must not exceed ten days (*State vs. Rust*, 2 Tenn. Chancery, 181).

In Michigan fines may not exceed two hundred and fifty dollars nor imprisonment thirty days (*Sloman vs. Rgilly*, 95 Michigan, 264).

In Georgia, by section 242, subparagraph 5, punishment is limited to twenty days' imprisonment.

In California, by the Practice Act, sections 488, 489, punishment may not exceed five hundred dollars and imprisonment not exceeding five days (*Galland vs. Galland*, 44 Cal., 475).

In Texas, in 1889, before justice of the peace, punishment may not exceed twenty-five dollars or the imprisonment one day (*Ex parte Robertson*, 27 Texas Appeals, 628).

In Wisconsin, by the Revised Statutes of 1858, chapter 149, section 25, not more than six months' imprisonment is permitted (*In re Pierce*, 44 Wis., 411).

In North Carolina, *In re Patterson*, 99 N. C., 418, the court finding punishment excessive reversed the case.

In re Beukalaer vs. People, 25 Illinois Appeals, 460, the court holding that a fine of five hundred dollars and imprisonment for thirty days for removing birthmark on a child was an unusual and immoderate punishment, the conviction was reversed and the cause remanded.

Conclusion.

In view of the errors of fact upon which the opinion of the Court of Appeals is based, and the errors of law involved in overruling the statute of limitations, in recognizing by no dissent the practice of directing inquiries as to possible guilt by those who are committed in advance, and in other material respects, we urge that a certiorari should issue and upon a hearing the conclusions below should be reversed.

Respectfully submitted,

JACKSON H. RALSTON,
FRED'K L. SIDDON'S,
WM. E. RICHARDSON,

Petitioners' Attorneys.

ALTON B. PARKER,

Of Counsel.

7
Office Supreme Court, U. S.
FILED.

JUN 6 1913

JAMES H. McKENNEY,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. ~~1116~~ 574

EX PARTE SAMUEL GOMPERS, JOHN MITCHELL,
AND FRANK MORRISON, PETITIONERS.

BRIEF IN OPPOSITION TO GRANTING OF CROSS-
WRIT OF CERTIORARI ON THE PETITION OF
THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

JACKSON H. RALSTON,
FREDERICK L. SIDDON,
WILLIAM E. RICHARDSON,
Attorneys for Defendants.

ALTON B. PARKER,
Of Counsel.



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1145.

EX PARTE SAMUEL GOMPERS, JOHN MITCHELL,
AND FRANK MORRISON, PETITIONERS.

**BRIEF IN OPPOSITION TO GRANTING OF CROSS-
WRIT OF CERTIORARI ON THE PETITION OF
THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

So far as the petition filed herein by the justices of the Supreme Court of the District of Columbia for a writ of certiorari is merely in advocacy of the granting of the petition of the defendants for a writ of certiorari, the defendants have no fault to find with the petition, except such as would flow from observations hereinafter made.

But the defendants earnestly oppose the granting of a cross-writ of certiorari to the justices of the Supreme Court of the District of Columbia (if their petition is to be regarded as asking for one), or to the prosecution, basing their objection on two grounds, which will be stated as briefly as possible.

I.

These contempt proceedings are of a purely criminal nature and, therefore, the Government is not entitled to a writ of certiorari.

The equity suit in which the court granted the injunction alleged to have been violated by the defendants had been settled when these contempt proceedings were instituted. There was no longer an injunction which the complainants in that suit were interested in having enforced. Hence the punishment to which these defendants have been sentenced cannot have any incidental remedial effect, but is punitive only, to vindicate the authority of the court, and these proceedings must, therefore, be of a purely criminal nature (*Gompers vs. Buck's Stove & Range Company*, 221 U. S., 418, 441-443).

These proceedings being for purely criminal contempt "with the Government on one side and the defendants on the other" (*Gompers vs. Buck's Stove & Range Company*, 221 U. S., 418, 445), the prosecution is not entitled to a review of a judgment against it. This court has decided, upon most careful consideration, that a writ of error does not lie in behalf of the United States in a criminal case (*United States vs. Sanges*, 144 U. S., 310). And this court has also held that the writ of certiorari cannot be granted under the act of March 3, 1891, c. 517 (26 Stat., 826), in a criminal case at the instance of the United States, whatever the supposed importance of the question involved (*United States vs. Dickinson*, 213 U. S., 92). It will be observed that the part of section 6, construed in this case, which authorized the review of judgments of the Circuit Court of Appeals by this court on certiorari (though now amended, Judicial Code, sec. 240), was practically identical with the present statute (Judicial Code, sec. 251), which

authorizes the review on certiorari by this court of decisions by the Court of Appeals of the District of Columbia.

Since these contempt proceedings are not civil, nor quasi-civil, nor quasi-criminal, but purely criminal, the two decisions cited above must be directly applicable here. As is said in *Loveland on Appellate Jurisdiction* (sec. 122, p. 274):

"A criminal contempt proceeding is a controversy between the Government on one side and the party charged with contempt on the other. The Government is not entitled to review a judgment against it in a criminal case except in the instances provided by the act of March 2, 1907."

II.

Neither the Supreme Court of the District of Columbia nor the justices thereof are parties to these contempt proceedings, and therefore neither the court nor the justices are entitled to a cross-writ of certiorari.

Petitioners for a writ of certiorari who are not parties to the record, and have no direct legal interest in the proceedings complained of, cannot maintain the writ (*Lord vs. County Com'rs for Cumberland County*, 105 Me., 556).

Proceedings for criminal contempt "are between the public and the defendant"; they are proceedings with the Government on one side and the defendant on the other (*Gompers vs. Buck's Stove & Range Co.*, 221 U. S., 418, 445). In prosecutions for criminal contempt the United States is the plaintiff (*Durant vs. Washington County*, 1 Woolv., 377; 8 Fed. Cas. No. 4, 191). In a proceeding for contempt the State is the real plaintiff or prosecutor (*Haight vs. Lucia*, 36 Wis., 355, 360). In criminal prosecutions for contempt the State is a proper party, and, if exception is taken to a judgment attaching a party for criminal con-

tempt, the State must be made a defendant in error in the reviewing court (*Auto Highball Co. vs. Sibbett* (Ga. App., 1912), 75 S. E., 914).

Proceedings for contempt of court being criminal in their character, and the United States being plaintiff, whenever the vindication of the authority of the Government requires it the District Attorney should appear in such proceedings (*Durant vs. Washington County*, 1 Wooly., 377; 8 Fed. Cas. No. 4, 191). But in this case there is no appearance by the District Attorney; for while Clarence R. Wilson, United States Attorney for the District of Columbia, appears as one of counsel for the prosecution, he does not appear in his official capacity of District Attorney. In a letter addressed to the Honorable Daniel Thew Wright, Associate Justice Supreme Court of the District of Columbia, Washington, D. C., under the date of July 21, 1911, Mr. Wilson said, in part (Record, fols. 50-51):

"Your honor's suggestion followed the overruling of a motion made by the respondents to amend the order directing J. J. Darlington, Daniel Davenport and James M. Beck to prosecute the charges of contempt against the respondents, by striking out the names of these gentlemen, and substituting therefor the name of the District Attorney of the United States for the District of Columbia.

"I consider that, as District Attorney, there is no duty incumbent upon me to take part in the proceedings against these respondents for their alleged contempt. Nor, do I think, with entire respect to your honor, that there is in the court any authority to designate or appoint me, as District Attorney, a member of the committee to act in this matter.

"I must, therefore, as United States Attorney for the District of Columbia, respectfully decline to take part in these proceedings at this time.

"As an attorney and officer of this court, however, I am in duty bound to observe the wishes of the court, should your honor desire my personal assistance in the punishment of those said to be guilty of contempt of its dignity and authority."

And Mr. Wilson has not since entered any different appearance in these cases.

It has been expressly held in Iowa that the trial court is not a party to contempt proceedings (*Jones vs. Mould*, 151 Iowa, 599; 132 N. W., 45), but the citation of authority in support of this proposition seems hardly necessary. It is inconceivable that a judge who presides over the trial of a cause can be a real party to the litigation.

For the reasons given above the defendants respectfully submit that the petition entitled in part "Petition of the Supreme Court of the District of Columbia for a writ of certiorari," and signed by the justices of that court, should not be granted so far as it can be deemed to be an application for a cross-writ of certiorari.

JACKSON H. RALSTON,
FREDERICK L. SIDDONSON,
WILLIAM E. RICHARDSON,
Attorneys for Defendants.

ALTON B. PARKER,
Of Counsel.